INTERSTATE

CASE LAW UPDATE

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I. JURISDICTION TO ESTABLISH PATERNITY AND SUPPORT

A. Mixing Custody and Support Actions -

1. Establishing Support in UCCJEA Action - A Texas trial court erred in refusing a man's request to set aside a 2007 agreed order establishing parentage, custody and child support brought under the UCCJEA, where the child's home state was Mexico, and no other indicia of the child's connection to Texas was apparent from the record, the Texas Court of Appeals ruled. The court rejected the mother's contention that the order was valid under UIFSA, saying, "the UIFSA is inapplicable to the jurisdictional issue before this court because [the UCCJEA] provides the exclusive jurisdictional basis for making a child custody determination by a Texas court." *In re S.A.H.*, — S.W.3d — (Tex.Ct.App., No. 14–13–01063–CV, 11/18/14).

2. Modifying Custody in a UIFSA Action -

   a. An Indiana trial court did not err when — as part of a paternity proceeding under UIFSA — it modified custody in the father's favor, the Indiana Court of Appeals ruled. By entering into an agreement regarding child custody and visitation as part of the paternity proceeding, Mother stipulated to the jurisdiction of the trial court over those issues. *In re Paternity of J.G.*, 19 N.E.3d 278 (Ind.Ct.App. 2014), 40 FLR 1594.

      (1) Mother opened her IV-D case in Kansas after receiving food stamps there. Subsequently, the Kansas IV-D agency forwarded to Indiana its UIFSA request to establish paternity and a support order against Father, who resided in Indiana. The Crawford County prosecutor opened a paternity cause, requesting that "the matter be set for issues of custody, parenting time, and child support." In 2009, the trial court entered an order establishing Father's paternity and ordering him to pay $53 per week in support. The trial court also ordered, *pursuant to an agreement reached by Mother and Father*, that Mother would have custody of the child and Father would have parenting time and telephonic contact with the child pursuant to an agreed-upon schedule. Subsequently, Mother relocated with the child to Ohio, then back to Indiana, and then to Nevada; the latter move without notice to Father. In 2013, Father filed in Indiana his request to modify custody and obtain support from Mother, which the trial court ultimately granted.

      (2) Mother appealed. She argued that because there was never an explicit stipulation that the trial court would have jurisdiction over anything other than paternity and child support, it lacked jurisdiction to consider custody. The appellate court

disagreed. It observed that Ind. Code § 31-18-7-2[1] provides that "Nothing in this chapter shall be construed to confer jurisdiction on the court to determine issues of custody, parenting time, or the surname of a child. However, the parties may stipulate to the jurisdiction of the court with regard to custody, parenting time, or the surname of a child." Thus, it held, "[b]y entering into an agreement regarding custody and visitation, placing it on the record in the paternity proceeding, and having the trial court approve the agreement and incorporate it into an order in the paternity proceeding, the parties implicitly stipulated to the trial court's subject matter jurisdiction regarding visitation and custody under the UIFSA. That stipulation had full force and effect throughout the continuing litigation of those same issues over the years." *Paternity of J.G.*, 19 N.E.3d at 282. The appellate court also affirmed the custody award to Father. *Id.* at 283.

b. An Indiana trial court erred in finding that it had subject matter jurisdiction under UIFSA to modify custody to a man, a determination which prompted the IV-D agency to dismiss without prejudice its UIFSA petition to establish paternity and support brought by the custodial mother who resided in Mississippi, the Indiana Court of Appeals decided. *In re Paternity of D.T.*, 6 N.E.3d 471 (Ind.Ct.App. 2014), 40 FLR 1250.

(1) In this case, Mother, a Mississippi resident, forwarded to Indiana her request to establish paternity and support for her two-year-old son, D.T. In February 2013, Father appeared in the trial court and admitted paternity. The trial court, however, held its child support determination under advisement pending a custody determination, as there was evidence the child had gone back and forth between Father and Mother since 2011. One month later, Father filed under the UIFSA cause his request to establish custody. Father apparently sent Mother notice where he knew Mother was not, and obtained a default order awarding him custody. Mother appealed, arguing that Indiana lacked personal jurisdiction over her and lacked subject matter jurisdiction to award Father custody as part of a UIFSA action.

(2) The appellate court reversed. It noted that the action was unquestionably one under UIFSA, apparent from the transmittal upon which the action was commenced. It went on to explain that subject matter jurisdiction under UIFSA does not include matters of custody and parenting time, citing *In re Marriage of Truax*, 522 N.E.2d 402, 405 (Ind.Ct.App. 1988). Because the UIFSA action "impermissibly morphed into a custody action and resulted in a custody order that is void for lack of subject matter jurisdiction," the trial court erred in denying Mother's request to set aside the custody order.

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[1]The initial publication of this case through the Indiana Appellate Opinions Archive erroneously cites to IC § 31-18-3-1. The Westlaw version has the correct statutory reference, IC § 31-7-2.

(3) The appellate court further noted that the county prosecutor dismissed the UIFSA petition because, given the award of custody to Father, "no useful purpose will be served in the further prosecution of the UIFSA at this time." Now finding the custody order void, the appellate court concluded that the UIFSA proceedings should be reinstated. Accordingly, it reversed and remanded for proceedings consistent with its decision.

(4) Editor's comments -

(a) There is nothing inherently problematic with bringing a custody action under the same cause number as a pending UIFSA, so long as to the two actions are clearly distinguished in the pleadings, and the different jurisdictional rules of UIFSA and the UCCJA are recognized and followed. The error in this case was piggy-backing subject matter jurisdiction to determine custody in a UIFSA action. Father apparently made no independent showing of custody jurisdiction under the UCCJA in his pleadings, although the appellate decision does not discuss this point. What the opinion makes clear, however, is that Father failed to provide Mother notice in accordance with IC §§ 31-25-5-5(a) and 31-21-3-3.

(b) In a footnote, the appellate court also opined that Mother had not acquiesced to Indiana's jurisdiction over her in the custody matter by virtue of UIFSA pleadings being transmitted to Indiana and filed by the Madison County Prosecutor's Office. Among other things, it noted that "Mother did not file the petition in the trial court to establish paternity. Instead, it was initiated by authorities in the state of Mississippi, in an effort to establish paternity and enforce child support under UIFSA."

B. Omitted Child in Dissolution Decree; Duration of Support - An Oregon trial court did not err in ordering a man to pay support for a child born during his marriage, where the man had failed to timely disavow his paternity under Louisiana law, the Oregon Court of Appeals ruled. This was true even though his Louisiana dissolution decree, while mentioning other children between the parties, omitted the subject child. *State ex. rel. Simons v. Simons*, 336 P.3d 557 (Or.Ct.App. 2014), 40 FLR 1564.

1. Facts - Child was born in 2003, while Mother and her former husband (Simons) were married. Simons is named as the father on the child's birth certificate. The parties' 2004 Louisiana divorce decree named two children of the marriage, but did not mention Child and did not provide for his support. Mother and Child reside in Louisiana; Simons in Oregon.

2. In 2012, Oregon received a request to establish support for Child. The Lane County District Attorney's Office filed its request under UIFSA to establish an order.[2] Simons objected, claiming he was not Child's biological father. Over objection, the court found that Simons had been established as Child's father because his name appeared on Child's birth certificate and he was presumed to be Child's father under Louisiana law. Accordingly, Simons could not raise non-parentage as a defense to the action for support. The court ordered Simons to pay $292 per month in current support and past support of $588. Moreover, the court ordered "support to continue until [Child] reaches age 18 or age 21 if attending school." Simons appealed.

3. <u>Arguments and discussion</u> - Simons first argued that Louisiana dissolution decree was a "child support order" under UIFSA which Oregon was required to defer. The appellate court rejected this contention, saying that ORS 110.303(21) defines a "support order" as "a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child * * * which provides for monetary support." Since the Louisiana dissolution judgment (or any other court order) did not even mention Child, let alone provide for his support, there was no "previous order for support" in existence. Hence, the Oregon court was empowered to establish a child support order.

4. Simons next argued that he should have been allowed in the Oregon proceeding to rebut his presumption of paternity, because his parentage had never been previously determined "by or pursuant to law." Thus, he argued, ORS 110.381, which provides, "[a] party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter," was inapplicable. The appellate court rejected this contention on several grounds.

    a. First, the appellate court held that Simons' paternity had in fact been established. The court observed that UIFSA does not define "previously determined by or pursuant to law." It acknowledged that the term in common usage means "decided or settled conclusively," (*see Webster's Third New Int'l Dictionary*) implying that "there must be some type of conclusive determination, decision, or adjudication of parentage to foreclose a defense of nonparentage under ORS 110.381." However, it said, paternity may be "determined" by operation of law. For example, a party may execute a paternity affidavit, or parents may marry after child's birth. In addition, consent to artificial insemination creates legal parentage under Oregon law.

[2]The opinion notes: "On this record, it is not clear whether the request came from the Louisiana child support enforcement agency or from mother directly, but that fact is not significant in this case. Under both ORS 416.415(1) and ORS 110.342(3), either may initiate a proceeding for support. The administrative law judge's order in this case states that the district attorney 'received a request for IV-D services to establish child support' in this case."

b. In this case, Simons was listed as Child's father on the birth certificate, and he had failed to disavow his paternity in Louisiana by timely filing pleadings in that state to do so.[3] Accordingly — under Louisiana law — Simons had lost his chance to disavow his paternity; he could not belatedly do so in the Oregon UIFSA action for support.

c. It was of no moment that his dissolution decree, while it named other children between him and Mother, completely omitted Child. Rejecting Simons' argument, the appellate court stated "Counsel has not provided us with any authority that under Louisiana law a dissolution judgment must list all children of the marriage, and we have not found any. But we conclude that, even if there were such a requirement, the fact that a dissolution judgment makes no mention of a child does not foreclose the possibility of an undisclosed child subject to the presumption of paternity. ... As noted, Louisiana considers the presumption of legitimacy of a child born during marriage to be one of the strongest in the law and one that is not easily disavowed."

5. In his second assignment of error, Simons contended that the court erred in ordering that child support extend potentially until the child is 21 years old. In support, Simons cited a Louisiana statute that requires support to end when a child completes high school. The appellate court rejected Simons' argument, saying that his contention that Louisiana law applies to the determination of the duration of support is based on the erroneous assumption that Oregon was modifying the Louisiana dissolution order. To the contrary, the dissolution judgment, as discussed above, was not a support order under UIFSA. Thus Oregon was establishing a new order, and therefore Oregon's substantive law under its support guidelines applied.

C. Personal Jurisdiction over Non-Resident Respondent - An Illinois trial court did not err when, in adjudicating a putative father's action to establish a parent-child relationship, it found that it had personal jurisdiction over the respondent-mother, the Illinois Court of Appeals decided. *In re Parentage of W.J.B.* (Ill.Ct.App., No. 2–14–0361, 9/24/14) (unpublished).

1. Mother, a North Carolina resident, appealed the Illinois trial court's finding that it had subject matter and personal jurisdiction over her in the putative father's action to establish a parent-child relationship. Mother testified at trial that she left the child with

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[3]At the relevant time, Louisiana Civil Code article 189 provided:

"A. A suit for disavowal of paternity must be filed within one year after the husband learned or should have learned of the birth of the child[.] * * *

B. Nevertheless, the suit may be filed within one year from the date the husband is notified in writing that a party in interest has asserted that the husband is the father of the child, if the husband lived continuously separate and apart from the mother during the three hundred days immediately preceding the birth of the child."

his paternal grandparents in Illinois for a "short visit" while she recovered from surgery. The trial court denied Mother's motion to dismiss, and she appealed.

2. Affirming, the appellate court observed that the Illinois UIFSA, Section 201(a)(5), provides that Illinois may exercise long-arm jurisdiction under UIFSA if "the child resides in this State as a result of the acts or directives of the individual." 750 ILCS 22/201(a)(5) (West 2012). Mother argued that "resides," which is not defined under UIFSA, means that, for a person to reside in a particular state, there must be a sense of permanency and intent to remain in that state. Mother further argued that there must be some sort of "affirmative act," "pattern," or "course of conduct" to satisfy the "acts or directives" phrase set forth in section 201(a)(5) of the IUIFSA. She maintained that she did not intend for the minor to reside in Illinois but merely acquiesced to him being there to visit for a period of time. She argued that she took no initiative to send the minor to reside in Illinois and made no attempt to transfer custody of the minor, either formally or informally.

3. Rejecting Mother's argument, the appellate court noted that Mother left the child with his paternal grandparents for over five months, even though her surgery was on an out-patient basis, she returned to work three days later, and she had a vehicle at her disposal at all times. Mother retrieved the child only after she had been served with the Illinois complaint. During this time, Mother did not visit the child at all. Under these facts, the trial court did not abuse its discretion in finding that the child had resided in Illinois "as a result of the acts or directives of" Mother. Moreover, the appellate court said, because Mother "sent the minor to Illinois and for five and a half months, never visited him, never made any effort to retrieve him, and there is no evidence that she supported him in any way during that time, it was foreseeable that at some point either petitioner or his mother would seek some form of child support." Hence, Mother had by her actions "purposely availed herself of the privilege of conducting activities in the state" (distinguishing *Kulko v. Superior Court of California*, 436 U.S. 84 (1978)). Accordingly, Illinois' exercise of jurisdiction over her comported with "traditional notions of fair play and substantial justice" under the federal constitution.

D. Res Judicata - Dismissal of Prior Action with Prejudice - A New York trial court erred in refusing to dismiss a mother's UIFSA action to establish paternity and support where the same action had been dismissed with prejudice in Alabama, the New York Supreme Court, Appellate Division, ruled. *Starla D. v. Jeremy E.*, 121 A.D.3d 1221, 994 N.Y.S.2d 702 (N.Y.App Div. 2014).

1. Mother in 2001 filed an Alabama action against the alleged father, a New York resident, seeking to establish paternity and obtain support. The man, appearing pro se, answered and thereafter underwent DNA testing. Mother, who did not complete her portion of the DNA testing, subsequently moved to dismiss the proceeding "with prejudice," which the

Alabama court granted in 2004. In 2011, Mother filed her UIFSA action in New York against the man, again seeking to establish paternity and support. He moved to dismiss, contending the petition was barred by res judicata. The trial court denied the objection and the man appealed.

2. Reversing, the appellate court opined that in New York, res judicata, or claim preclusion, bars successive litigation based upon the same transaction or series of connected transactions if: (i) there is a judgment on the merits rendered by a court of competent jurisdiction, and (ii) the party against whom the doctrine is invoked was a party to the previous action [or proceeding], or in privity with a party who was.

3. The court noted that there was no dispute that the Alabama proceeding involved the same parties and underlying issues, *i.e.*, paternity and child support. Additionally, it noted, under both Alabama and New York law, a dismissal "with prejudice" constitutes an adjudication "on the merits." Further, there was no question the Alabama court had subject matter jurisdiction over the paternity and support proceeding. Finally, by agreeing to DNA testing, the Alabama court had personal jurisdiction over the alleged father. In sum, the Alabama dismissal "with prejudice" was entitled to preclusive effect in New York.

E. <u>Simultaneous Proceedings</u> -

1. An Ohio trial court properly entered child a support order over the objection of the noncustodial father who claimed that Ohio lacked personal jurisdiction over him, the Ohio Court of Appeals ruled. The appellate court observed that Ohio was the child's home state, and the parties had agreed in their Minnesota dissolution action to defer custody and support issues to Ohio. *Ramirez v. Ramirez*, 2014-Ohio-3799 (Oh.Ct.App. 5th Dist. 2014), 2014 WL 4292784, 40 FLR 1541.

   a. In this case, Father in 2012 served Mother with his Minnesota dissolution petition. That same day, Mother filed in Ohio her complaint for dissolution. Father moved to dismiss Mother's action on grounds that Ohio lacked personal jurisdiction over him, which the trial court granted. However, the Ohio trial court held, as the child's home state, it had jurisdiction to enter an award for custody, support and visitation. It awarded Mother custody and ordered Father to pay support. Father appealed, saying the matter should have been heard in the Ohio Juvenile court, not in domestic relations court. He also argued that Minnesota (where Father resided), not Ohio, should be the collecting state.

   b. Affirming the trial court, the appellate court looked to UIFSA's provisions governing simultaneous proceedings, Ohio R.C. 3115.06. It found that, with respect to support orders, Ohio was authorised under the circumstances to enter orders because it was

the child's home state. Moreover, the Minnesota dissolution decree expressly deferred the issues of custody and support, with the proviso that the Minnesota dissolution court would enter orders if the Ohio court refused to do so. In so holding, the appellate court opined:

> The final decree found that both parties were represented, and both "reached an agreement resolving all issues raised by these proceedings." The final decree specifically found "Minnesota is not the proper jurisdiction within contemplation of the Uniform Child Custody Jurisdiction Act to enter an Order regarding the custody, care and control of the minor child of the parties."
>
> The language of the final decree from Minnesota, coupled with the parties' agreement/consent, vests jurisdiction on the issues of child custody, support, and companionship with the trial court sub judice. Accordingly, we find the trial court's jurisdiction has been satisfied under R.C. 3115.06 and 3115.07(A).

Ramirez v. Ramirez, slip op. at 6-7.

c. Judge Hoffman dissented in part, saying the Ohio Juvenile Court, not the Domestic Relations Court, had proper jurisdiction, since the issue was "not ancillary to an action for divorce."

2. A Minnesota trial court did not err in granting a mother's request to terminate her marriage, award her custody and enter a child support order against her husband, who resided in France, notwithstanding her husband's pending action in France, the Minnesota Court of Appeals decided. *Moyne v. Moyne* (Minn.Ct.App., No. A13–2077, 5/12/14) (unpublished).

   a. In this case, Mother filed her Minnesota dissolution action on September 29, 2011, and personally served her husband. Her petition asked the court to terminate her marriage, award her custody of the parties' two children and require Father to pay child support. Meanwhile, Father filed his dissolution action in France during December 2011. That same month, Mother filed an *ex parte* motion for custody of the children in the Minnesota court on December 20, 2011. Father moved to dismiss, arguing that the Minnesota court lacked subject-matter jurisdiction. The trial court found that it had jurisdiction, divorced the parties and ordered Father to pay support. Father appealed.

   b. The appellate court held the record sufficed to show that Mother had resided in Minnesota for the requisite period and thus had subject matter jurisdiction to grant

the divorce. In addition, the record reflected that Minnesota was the children's home state and thus had subject matter jurisdiction to award Mother custody.

c. With regard to child support, the appellate court affirmed. It noted the treatment afforded simultaneous proceedings under UIFSA:

> If a petition is first filed in Minnesota, then a petition is filed in another state, the other state will have jurisdiction if:
>
> (1) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
>
> (2) the contesting party timely challenges the exercise of jurisdiction in this state; and
>
> (3) if relevant, the other state is the home state of the child.

Minn.Stat. § 518C.204(b).

d. The appellate court held that Father had satisfied subsections (1) and (2). However, the child's home state was Minnesota, not France. "Because home state is defined using the same language in the UIFSA and the UCCJEA, the same analysis applies. Because Minnesota and not France is the children's home state for purposes of child custody, it is also their home state for determining child support. Accordingly, because France was not the home state of the children, the Minnesota district court had jurisdiction to determine child support."

F. Spousal Support - A Minnesota trial court did not err in reserving a wife's potential claim for spousal support she requested in her Minnesota dissolution proceeding, even though the trial court lacked personal jurisdiction over the husband, who resided in Norway, the Court of Appeals of Minnesota decided. The appellate court explained that the trial court was merely reserving the issue, but under UIFSA would still have to acquire personal jurisdiction over the husband, if and when the court actually issued a spousal support order. *Shults v. Shults* (Minn.Ct.App., No. A13–1892, 6/23/14), 2014 WL 2807709 (unpublished).

II. JURISDICTION TO ENFORCE

A. Collateral Attack on the Underlying Judgment - A Florida trial court properly refused a divorced man's action collaterally attacking a domesticated New Jersey judgment for unpaid support and alimony, the Florida Court of Appeal ruled. *Jonas v. Jonas*, — So.3d — (Fla. Dist.Ct.App., No. 4D13-1438, 2/11/15), 2015 WL 566352.[4]

1. To simplify, a New Jersey Court in 1997 entered judgments against Father for unpaid alimony and child support. The New Jersey court also directed the establishment of a constructive trust to be funded with properties owned by Father, which it instructed the former wife to sell. In its order, the trial court provided that the former wife may pay the judgments from these funds if the former husband otherwise defaulted on his obligations. Thereafter, Mother relocated to Florida and domesticated the judgment there. After unsuccessful attempts to collaterally attack the New Jersey order in Florida (and Montana, to which Father had absconded), Father filed a second Florida petition to collaterally attack the New Jersey order. He claimed that Mother had mismanaged the constructive trust. The trial court denied his motion and rejected his contention that Florida had subject matter to entertain a collateral attack based on Mother's extrinsic fraud. Father appealed.

2. In affirming the trial court, the Florida appellate court opined that Father "is not challenging the validity of the New Jersey judgment; he is claiming that the Florida domesticated judgment should have been satisfied through application of the funds in the constructive trust. All of his claims revolve around the management of the constructive trust by the former wife and the application of its proceeds to satisfying his obligations to her." It went on to hold that "[c]omity requires the courts of this state to refrain from exercising jurisdiction in this case. The New Jersey courts have prior jurisdiction and have demanded that, in order to obtain relief, the former husband return to their jurisdiction, from which he absconded. [] Having been told by two states that he must pursue his claims in New Jersey, the former husband should do so. We affirm the ruling of the trial court."

B. Comity -

1. Comity vs. Memorandum of Understanding - An Ohio trial court did not err in registering for enforcement an Israeli child support order under UIFSA, the Ohio Court of Appeals held. Although the trial court relied on principles of comity in registering the order, doing so was unnecessary in light of the Memorandum of Understanding between

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[4]The appellate court expressly denied Father's motion for rehearing, but vacated its prior opinion issued in this case on December 10, 2014, 2014 WL 6910820.

the United States and Israel. Moreover, the noncustodial's father's constitutional rights were not violated either because the order — issued in accordance with Jewish Law — imposed a greater obligation on him as a father, or because it did not provide the father an offset for the parties' other child he was caring for in Ohio. *Jenkins v. Jenkins* (Ohio Ct.App., No. 2014-CA-18, 10/3/14), 2014 WL 4953550, 40 FLR 1590.

a. The parties married in Israel and immigrated to the United States with their young son in 2007. Their relationship deteriorated, however, and the mother returned to Israel alone later that year. While in Israel in 2008, Mother gave birth to the parties' second child, a daughter, who had been conceived in the United States. Thereafter, the parties in 2009 obtained a divorce in Israel. The final decree imposed a child-support obligation on Father, who at all relevant times has continued to live in the United States with the parties' son.

b. In April 2013, Mother sought to register the foreign child-support order under Ohio's version of the UIFSA. Ultimately, the trial court, relying on principles of comity, confirmed the Israeli child support order over Father's objection. Father appealed, arguing: (1) that enforcing the order would violate his constitutional rights because its terms were based on his Jewish religion and his gender and (2) that the order should not be enforced because it failed to grant him an offset for his expenses raising the parties' son. Moreover, he argued, the trial court erred in enforcing the order based on comity but instead should have rejected it under principles articulated in the Memorandum of Understanding (MOU)[5] between the U.S. and Israel.

c. Comity vs MOU - The appellate court found that enforcement of the Israeli order did not require comity. Because the order was entitled to enforcement under the MOU and was not otherwise unenforceable under Ohio law, the trial court's reliance on principles of comity was unnecessary. Therefore, it said, "even if we assume, *arguendo*, that the trial court erred in citing comity, the error was harmless."

d. Constitutionality - Father argued that applying the MOU rendered the Israeli order unenforceable in the U.S. The MOU "essentially provides that each country will endeavor to recognize and enforce support orders from the other country" and "shall be implemented and enforced solely by the States' domestic laws." Father argued that because the Israeli order violated his state and federal constitutional rights, it was not in accordance with "domestic law," which thus afforded him a defense to enforcement of the Israeli order under UIFSA. Ohio R.C. 3115.44(A)(5). For the reasons stated below, the Ohio appellate court rejected Father's contentions.

[5] *See* http://www.acf.hhs.gov/sites/default/files/ocse/us_israel_mou.pdf, effective February 5, 2009.

e. Father asserted that his child support order was issued in accordance with Jewish Law, and required him be the child's sole provider.[6] This one-sided obligation, he argued, violated his equal protection and establishment clause rights under the Ohio and federal Constitutions.

f. The appellate court disagreed. It found that Father's child support obligation — issued by an Israeli civil court — contemplated an appropriate balance between both parties' financial condition and the child's needs. The Israeli court also recognized and considered the concept of imputed income and noted that Father's unemployment was only temporary. In addition, the order was relatively low — only $331 per month — and considered Father's expenses in caring for the parties' other child. In sum, the appellate court found that the Israeli order was not "so patently violative of equal protection or establishment-clause principles as to be unenforceable under the Memorandum of Understanding between the United States and Israel or under R.C. 3115.44(A)(5)."

g. <u>Failure to offset obligations</u> - Father also argued that the Israeli order was unenforceable because the order failed to grant him an offset for his expenses in raising the parties' son. He argued that Ohio law requires such an offset and that the absence of one renders the foreign order unenforceable. The appellate court rejected this contention on three independent grounds: (1) it was not clear that Father actually sought an offset when Israel issued its support order; (2) presumably, Father could

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[6] In relevant part, the Israeli order (which was translated from Hebrew to English below) provides:
5. The origin of the obligation for child support is stated in Section 3 of Family Law Amendment (Maintenance) 5719-1959. According to which:

> "A person is obligated to pay support for his minor children and the minor children of his spouse according to the Personal Status Law that applies to him ...."
>
> The personal status law that applies to the parties is the Jewish Law. 6. The subject in this case is a female minor under the age of 6, therefore the laws that apply in our matter with regard to the Minor girl and the Defendant's obligation to pay her essential support, derive from the laws about very young children. According to which the father has an absolute support obligation toward their needs.
>
> When the Minor girl reaches the age of six and up to the age of 15 the defendant is obligated, similarly to young children's support, to pay her essential support by virtue of the Chief Rabbinate Regulations of the year 5744, and with regard [to] needs beyond that the Parties are equally obligated by virtue of Charity Laws.

As stated by the Ohio Court of Appeals, "Child support in Israel is determined by the relevant personal status law of each parent, according to the Law to Amend the Law of the Family (Maintenance) 5719-1959. The personal status law is that of the religious community with which he/she is ethnically affiliated, regardless of whether there is an active affiliation. In the case of Jewish residents, the law obligates only the father to pay the necessary expenses of a child until the age of 15 years. Beyond that age, both parents can be obliged to support their minor children, according to the resources of each parent." *Id.* at 10."

have appealed the Israeli order, which he did not; and (3) since Israel has disclaimed jurisdiction regarding support for the boy in his custody, he may seek a remedy under Ohio law.[7]

2. Allegation of Fraud - A British woman was entitled as a matter of comity to enforce a judgment entered by a Hong Kong court for $570,110 in unpaid child support, the New York Supreme Court, New York County ruled. *Bond v. Lichtenstein* (N.Y.Sup.Ct., No. 152960/14, 7/15/14), 2014 WL 4798481.

   a. Paired down to its essentials, the High Court of England in 2010 issued an order that awarded Mother custody and required Father to pay child support. After the mother moved with the child to Hong Kong, Father sought to obtain a "mirror order" in Hong Kong. The court there held a trial, at which Father appeared by video and was represented by counsel. The trial resulted in a money judgment issued against Father for nearly $600,000. Thereafter, Mother sought to have the New York court enforce the order on principles of comity.

   b. Father claimed comity is inapplicable where the judgment was obtained by fraud. Father claimed that Mother had committed fraud by understating her income when the court issued its support order. Specifically, he alleged, Mother misrepresented to the court that monies given to her by another man were loans rather than gifts. In addition, this fraud caused him to be the child's sole provider, which he argued was repugnant to New York public policy, because both parents share financial responsibility to the child. In rejecting Father's arguments, the court said:

   > Departure from comity principles is rarely justified, an evidentiary basis is required to support the claim of fraud or offensive public policies. The party asserting fraud has the burden of proof and must establish that it is derived from overreaching, the concealment of facts, misrepresentation or some other form of deception. A foreign judgment cannot be attacked on the ground that it was obtained by false testimony related to the "issue in controversy." [T]hat type of intrinsic fraud is not a defense to entry of judgment. For comity purposes, the party opposing entry of judgment must establish "extrinsic fraud" was practiced by the party that obtained a judgment, preventing full and fair litigation of the matter because of a promise or agreement.

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[7] The appellate court acknowledged that direct modification of the Israeli order itself may be unavailable in Ohio. *See* R.C. 3115.48. Nevertheless, it said, "[i]n light of (1) the Israeli court's finding that it lacks subject-matter jurisdiction to 'discuss any claim' related to Mr. Jenkins' son and (2) Mr. Jenkins' custody of the boy in Ohio, we see no reason why he cannot simply seek child support for his son in Ohio much like the appellee did for their daughter in Israel. Res judicata would not preclude Mr. Jenkins from doing so given the Israeli court's refusal to hear any claim related to the boy. If Mr. Jenkins obtains a child-support order for his son, he then could seek to have it enforced against the appellee in Israel, or offset it against the foreign order in Ohio."

Bond v. Lichtenstein, slip op. 2-3

c. The court went on to say that Father had not met his case for establishing extrinsic fraud under the facts of the case. Moreover, while both parents share financial responsibility for the child, “there is no requirement that the calculation of child support fully adopt one party's claims over the other.” In sum, the support order issued in this case was neither “facially irregular or unconscionable.” It was not, therefore, repugnant to New York public policy.

3. Notification of Guardianship Proceeding - A Washington trial court abused its discretion in failing to recognize a child support order entered in a Japanese dissolution decree under comity principles merely because the Father had not been notified of guardianship proceedings involving his daughter some two years after the custodial mother had committed suicide, the Washington Supreme Court ruled. The high court held that the divorce decree is valid, “and whether it should be recognized as a matter of comity does not depend on whether [Father] had notice of the guardianship proceeding.” Accordingly, the trial court wrongly denied registration of the decree filed by the mother’s estate. *In re Estate of Toland*, 329 P.3d 878 (Wash. 2014), 40 FLR 1422.

   a. In so holding, the court stated the following:

      > Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation. Rather, it is a nation's expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws.
      >
      > The comity doctrine allows a court, acting within its discretion, to give effect to the law and resulting orders of another jurisdiction out of deference and respect, considering the interests of each jurisdiction. Under the Restatement (Second) of Conflict of Laws § 98 (1971 & Supp. 1989) (amended 1988), "[a] valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying claim are concerned." The foreign court must have had jurisdiction and there must have been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or

> in the system of laws under which it was sitting, or fraud in procuring the judgment.
>
> * * *
>
> If a foreign judgment is so contrary to the laws and policies of a state that enforcing it would seriously interfere with the state's policies or laws or is prejudicial to the state's interests, then comity does not apply. However, the mere fact that the law of the foreign jurisdiction and our own law are different does not establish a violation of this state's public policy.

Id. at 846-47 (citations and quotations omitted).

b. The court went on to note that Father "had notice of the divorce proceedings, was a party to the litigation, was represented by a Japanese firm familiar with Japanese divorce law, and had the assistance of four attorneys. Notwithstanding the money judgment under the decree, he chose not to appeal the divorce judgment, although he had the opportunity to do so, and thus did not challenge the child support awarded in the decree." *Id.* at 853-54. Accordingly, the trial court erred in refusing to register the Japanese order.

C. Jurisdiction to Enforce When All Parties Have Left the State -

1. An Ohio trial court erred in holding that because all parties had left Ohio, which had issued a child support order, it no longer had subject matter jurisdiction to enforce its order, the Ohio Court of Appeals ruled. However, the appellate court held, merely because the trial court *could* hear the State's contempt action against the noncustodial father did not mean it was *required* it to do so. This was especially true since the parties had apparently consented to a New York court's jurisdiction over custody, parenting time and child support issues. *Dinan v. Dinan* (Oh.Ct.App., No. CA2013–09–082, 9/8/14) (slip op.)

a. The parties divorced in Ohio in 2006. The dissolution decree awarded custody of the parties' two children to Mother and required Father to pay support. Thereafter, Mother and the children moved to Massachusetts and then to New York. Upon Mother's 2011 petition for civil protection filed in New York, the court suspended Father's parenting time. Mother subsequently filed in New York a petition to modify parenting time under the UCCJEA. In response, Father filed in Ohio his petition for contempt against Mother regarding parenting time. His petition listed Kentucky as his state of residence. Upon submission of briefs by both parties, the Ohio trial court declined to exercise jurisdiction over any matter involving the parties or children, saying that New York was better suited to hear the dispute.

b. One month later, the Ohio IV-D agency filed a contempt action against Father in the dissolution court. The trial court denied the motion, saying that once all parties and the child had left the issuing state, it no longer had subject matter to hear the petition. The State appealed.

c. The appellate court reversed the trial court's finding that Ohio had lost its power to enforce the child support order, saying that the court confused UIFSA's jurisdictional rules governing support modifications with its power to enforce the order. Moreover, Mother's UCCJEA action in New York could not control child support matters, as a child custody determination under the UCCJEA does not include "an order or the portion of an order relating to child support or other monetary obligations of an individual." Therefore, the appellate court said, "the provisions found in UCCJEA only apply to judgments, decrees, or other orders that provide for legal custody, physical custody, parenting time, or visitation with respect to a child, not to child support."

d. The court went on to say, however, that "simply because the [Ohio] Domestic Relations Court *could* enforce the child support order does not necessarily mean it was *required* to do so. Rather, our research indicates that a trial court's jurisdiction to enforce a child support order under these circumstances is permissive, not mandatory." Finding that the record made clear the Ohio court was declining to enforce the order, the trial court's judgment dismissing the State's contempt action was affirmed.

2. A Hawaii trial court did not err in enforcing portions of its 2008 dissolution decree, even though everyone had left that state and Oklahoma had subsequently modified the order, the Hawaii Court of Appeals ruled. In the first place, Oklahoma's modification did not divest Hawaii of its subject matter jurisdiction to enforce obligations that had accrued prior to Oklahoma's modification. Secondly, Oklahoma's modification was itself void for lack of subject matter jurisdiction because the noncustodial father filed the action where he resided, rather than in the mother's state of residence, Texas. *Simental v. Simental*, 133 Hawai'i 510 (Haw.Ct.App., No. CAAP-12-0000656, 7/31/14) (unpublished disposition). (This case is more fully discussed in *Jurisdiction to Modify*, this outline.)

3. An Illinois trial court lacked jurisdiction to modify a support order it had issued, where all parties and the child had left the state, the Appellate Court of Illinois, Second District, ruled. Adopting the opinion of the majority of states that "once the obligor, the obligee, and the minor children no longer reside in the issuing state, that state lacks a sufficient nexus with the parties to justify modifying a support order," it also held that "until a different jurisdiction obtains continuing exclusive jurisdiction over a support order, Illinois, as the issuing state, retains jurisdiction to enforce that order." In so holding, the appellate court affirmed the trial court's dismissal of a noncustodial father's petition to

modify support, but reversed the trial court's dismissal of Father's contempt action for Mother's failure to contribute to the minor's health insurance and travel expenses. *Collins v. Department of Health and Family Services ex rel. Paczek*, — N.E.3d — (Ill.Ct.App., No. 2–13–0536, 6/26/14). (This case is also discussed in *Jurisdiction to Modify*, this outline.)

D. Enforcement of Anti-Harassment Provision - A North Carolina trial court properly enforced provisions of a Tennessee marital dissolution agreement preventing a man from harassing his former wife and her family, friends and associates over the wife's relationship with another woman during the course of their marriage, the North Carolina Court of Appeals ruled. *Marshall v. Marshall*, 757 S.E.2d 319 (N.C.App. 2014).

1. In order to save his marriage, Husband at first consented to Wife's (Johanna) sexual affair with another woman, Lisa, who was also married to a man. When it became clear the marriage could not be salvaged, Husband began to harass the Wife, her friends, family and associates by sending text messages, making phone calls, etc. The parties' 2010 Tennessee marital dissolution agreement (MDA) included, *inter alia,* provisions which barred either party from harassing or interfering with the other and specifically prohibited Husband from harassing "Lisa and Bob Moore in any way, [sic] no communication with their friends or known associates."

2. In 2010, Wife sought and obtained a North Carolina domestic violence protection order (DVPO) and a no-contact order. Notwithstanding these orders, Husband continued to harass his former wife and others.[8] In 2011, Wife filed an action to register the Tennessee order for enforcement, alleging Husband had breached the MDA "by failing to make monthly structured payments, that he owed Johanna attorneys' fees she had incurred due to his noncompliance with the MDA, and that he was in contempt of the DVPO due to

[8] As explained by the court:

Defendant also repeatedly contacted Johanna's elderly parents to disparage them and Johanna. He began sending emails and letters about the relationship between Johanna and Lisa to their extended families, friends, co-workers, minister, religious congregation, and various media entities. In October and November 2010, Defendant sent a packet of information about the women's relationship to the minister of the Moores' church, members of that congregation, and the Moores' son. The 22–page packet included copies of numerous explicit and private emails between Johanna and Lisa. [] On 16 November 2010, Defendant emailed a copy of the packet to a reporter at the Charlotte Observer and explained that he planned to begin picketing the Moores' church. Defendant told Johanna that he hoped to ruin the Moores' lives and wished that Bob Moore would end up shooting Lisa over the situation. [] Defendant left numerous ranting voicemails for Johanna's parents in which he called Johanna's family "disgusting" and "scummy" people, expressed a wish that her elderly parents would "get sick and die," and threatened to cut off contact with his own son if the son visited Johanna or her parents. Defendant emailed his and Johanna's children and Johanna's father, describing Johanna's family as "disgusting" and "lazy" people who "brought devastation to the people and children around you."

Id. at 321-22.

his harassment and threats toward Johanna and her family." Husband did not object and the trial court confirmed the order by operation of law. Numerous contempt motions followed. In 2012, the trial court found Husband in contempt and levied fines. Husband appealed, arguing lack of subject matter jurisdiction. Wife moved to dismiss Husband's appeal, which the appellate court denied.[9]

3. Father argued that North Carolina lacked subject matter to enforce the anti-harassment provisions of the MDA. Husband acknowledged that while the registration and confirmation empowered North Carolina to enforce provisions of the MDA, it was not empowered to enforce other provisions. The appellate court disagreed, saying:

   > Defendant cites no authority for the startling proposition that a court might have subject matter jurisdiction over certain paragraphs and provisions of a foreign support order which has been properly registered and confirmed under UIFSA, but lack jurisdiction over other paragraphs and provisions. Nothing in UIFSA even suggests that a properly registered and confirmed foreign support order may only be enforced *in part* by our State's district courts. The relevant portions of UIFSA are contained in Chapter 52C, Article 6, Part 1, entitled "Registration and Enforcement of Support *Order*." (Emphasis added). The statutes quoted above all concern the registration and enforcement of *orders,* not paragraphs or provisions. This argument is overruled.

   Marshall v. Marshall, 757 S.E.2d at 324.

4. The appellate court also rejected Husband's contention that the Tennessee MDA was not an "order" subject to enforcement in North Carolina under UIFSA. It observed that UIFSA defines a "support order" as an order which benefits a spouse or former spouse by "provid[ing] for *monetary support, health care,* arrears, or reimbursement, *and may include* related costs and fees, interest, income withholding, attorneys' fees, and *other relief.*" N.C. Gen.Stat. § 52C–1–101(21) (emphasis added). Because the confirmed order required Husband to make monetary payments to Wife and required Husband to keep wife on his insurance policy, such was a qualifying order under UIFSA. "Finally," the

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[9]Said the appellate court:

> Johanna seeks dismissal on grounds that Defendant's pursuit of these appeals "is an offense to the dignity of the Courts of the State of North Carolina" in light of Defendant's contemptuous behavior in the trial court and his "outrageous conduct" toward Johanna, the Moores, and their families, friends, and acquaintances. While we agree that Defendant's actions are among the most shocking and extreme that the members of this panel have witnessed in the many divorce—related cases they have reviewed, we must deny Johanna's motions to dismiss. Hateful, juvenile, and even contemptuous behavior by appellants toward other people and our State's trial courts is, unfortunately, not grounds for dismissal. Accordingly, we reach the merits of Defendant's appeals.

Id. at 323.

court added, "UIFSA explicitly contemplates that 'support orders ... may include ... other relief.' *Id.* Thus, the MDA falls squarely within the statutory definition of a support order, and accordingly, this argument is also overruled." *Id.* at 324.

E. Registration -

1. Registration Deficiencies -

a. A Texas trial court erred in dismissing a father's request to register for enforcement a Louisiana child support order on grounds that it lacked subject matter jurisdiction to do so because Father had failed to file a "motion for registration," the Texas Court of Appeals held. The appellate court opined that no such formal motion is required under UIFSA. Instead, the order became registered when Father filed the Louisiana order in the Texas tribunal. The registration triggers the required notice to the non-registering party, but the registering party may simultaneously or subsequently file a petition requesting the relief sought. Although there was no evidence that the tribunal sent Mother the required notice in this case, she nevertheless appeared in the case, filed an answer, and appeared at the scheduled hearings. Under these facts, Mother was not harmed by her lack of notice under the registration requirements. The trial court thus erred in dismissing Father's petition to enforce the Louisiana order. *In the Interest of T.F. and T.F.* (Tex.Ct.App., No. 09-14-00064-CV, 1/15/15) (memorandum opinion).

b. Registration deficiencies under Arizona's Uniform Interstate Family Support Act (AUIFSA) do not create a jurisdictional bar to consideration of a petition to enforce a foreign child support order, the Arizona Court of Appeals decided as a matter of first impression. Unlike modification proceedings, it said, enforcement proceedings do not create a risk that an Arizona order will conflict with an order from another state. *Balazic v. Balazic*, 334 P.3d 771 (Ariz.Ct.App. 2014).

(1) In this case, North Carolina in 2000 issued its dissolution decree, which awarded Mother custody of the parties' four children and required Father to pay support. Thereafter, Mother and children moved to Arizona and Father to Pennsylvania. Mother in 2009 sought to domesticate the North Carolina order in Arizona. In 2011, Mother sought an order enforcing Father's child support arrearage and personally served Father in Pennsylvania. Father failed to appear at the August 2011 hearing and the trial court entered a judgment against him totaling $128,681.26 (representing $93,913.72 in arrears plus $34,767.54 in interest) and terminated Father's ongoing support obligations.

(2) Eighteen months later, after the Court of Appeals decided *Glover v. Glover*, 289 P.3d 12 (Ariz.Ct.App.2012), holding that a party must register an order in

compliance with Arizona's version of UIFSA to confer subject matter jurisdiction on an Arizona court to *modify* the order, Father moved to set aside the judgment as void, arguing that the trial court lacked subject matter jurisdiction to *enforce* the North Carolina child support order. The trial judge denied Father's motion and he appealed.

(3) Affirming, the appellate court acknowledged that in *Glover*, it had held that failure to properly register a foreign order in Arizona was a jurisdictional defect precluding Arizona from modifying the order. With regard to enforcement, however, the appellate court "concluded otherwise," because "the distinction between these two types of proceedings is critical to AUIFSA and the Uniform Interstate Family Support Act (2001) on which AUIFSA is based." It emphasized that modification rules are designed to prevent multiple, inconsistent orders. "In contrast, a proceeding intended only to enforce an out-of-state child support order does not present the same implications for the one-order system or the rights of the parties. Because an enforcement action recognizes only the existing order, it does not result in competing support orders. Nor does an enforcement action modify the parties' obligations; those are already set forth in the existing order."

(4) The appellate court went on to say that "in other circumstances, a failure to properly register an order for enforcement under AUIFSA may present due process questions of notice to the support obligor, because registration is the trigger for AUIFSA-specific notification procedures. But here, Father—who was served with the enforcement petition and in fact responded by requesting a continuance—does not argue that he lacked notice of the enforcement proceedings (although he notes that the form of notice under AUIFSA would have been different). Nor does Father challenge the existence or validity of the North Carolina child support order at issue or otherwise challenge the merits of the superior court's enforcement order (*i.e.*, the amount of arrearages). Accordingly, we conclude that the superior court properly exercised jurisdiction to enforce the North Carolina child support order and, therefore, did not err by denying Father's motion to set aside the judgment."

c. An Alabama trial court lacked subject matter jurisdiction to enforce a Tennessee child custody order, where the noncustodial father had failed to register it under the Uniform Child Custody Jurisdiction and Enforcement Act before seeking a contempt action against the custodial mother. Because of that procedural misstep, the trial court likewise did not have jurisdiction over the mother's counterclaims for unpaid child support. (She also failed to register the Tennessee order). The case was thus remanded back to the trial court for entry of dismissal. *Krouse v. Youngblood*, — So.3d — (Ala.Civ.App., No. 2130337, 1/9/15), 2015 WL 132451, 41 FLR 1126.

2. Objections; Failure to Serve Pleadings on Custodial Parent - An Ohio trial court did not err in registering an Australian child support order against a noncustodial father under UIFSA, where the father had filed objections to the registration without serving the custodial mother with his pleadings, the Ohio Court of Appeals decided. The appellate court noted that UIFSA does "not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency." As such, "we find [the IV-D agency] and appellee required separate service." In addition, the appellate court rejected Father's contention that service on Mother was not required because she had failed to appear during the proceedings, saying that under R.C. 3115.27(A) of Ohio's UIFSA's statute, "[t]he physical presence of the plaintiff in a responding tribunal of this state is not required for the issuance, enforcement, or modification of a support order." *Purcell v. Estes* (Oh.Ct.App., No. 13AP–606, 3/18/14) (Slip op).

3. Which Order Is Getting Registered? - An Arizona trial court did not err in domesticating and enforcing a noncustodial father's child support arrearage that had accrued under a 1984 California child support order and was subsequently registered in Illinois and reduced to judgment there, the Arizona Court of Appeals ruled. Because Mother was in Arizona seeking to domesticate the 1995 Illinois judgment, not the original California child support order, the California statute of limitation was irrelevant to the question whether Mother could seek to enforce the Illinois judgment in Arizona. *Rewers v. Pope* (Ill.Ct.App., No. 1 CA–CV 13–0007, 3/13/14) (unpublished).

    a. The parties' 1984 California divorce decree required Father to pay support for their minor child. In 1993, after Mother and the child moved to Illinois, she sought to register for enforcement the California order. Father — who was represented by counsel — filed a motion to quash, arguing lack of personal jurisdiction over him in Illinois. After protracted litigation, the parties in 1995 entered into a court-approved settlement agreement stating that Father must pay Mother for child support arrearages that had accrued between January 1, 1987, to June 1, 1995. By 2007, Father had relocated to Arizona, and in 2008, Mother filed in Arizona the Illinois judgment for enforcement under the Uniform Enforcement of Foreign Judgment Act. A.R.S. §§ 12–1701 to –1708.

    b. Father moved to dismiss, arguing, among other things, that: (1) the California and Arizona statute of limitations barred enforcement of the judgment; and (2) the doctrines of equitable estoppel and laches applied to prevent Mother from pursuing the judgment. The trial court rejected Father's motion, and he appealed.

    c. The appellate court affirmed. It observed that Arizona's version of UIFSA, A.R.S. § 25–1304(B), provides: that "[i]n a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state, whichever is longer,

applies." The "issuing state" is defined as "the state in which a tribunal issues a support order or renders a judgment determining parentage." A.R.S. § 25–1202(9). "Support order" means "a judgment, decree, order or directive ... for the benefit of a child ... or former spouse, that provides for monetary support, heath care, arrearages or reimbursement...." A.R.S. § 25–1202(24).

d. Accordingly, the appellate court said, the Illinois judgment is a "support order." Because Mother domesticated the Illinois judgment, and not the California divorce decree, Illinois is the issuing state, not California, and the statute of limitation of Arizona or Illinois could apply. Holding that Mother's action was not barred by the Arizona statute of limitations under the facts of this case, Father's argument failed in this respect.

e. Similarly, the appellate court also rejected Father's motion to dismiss based on equitable estoppel and laches, saying "[Father] may assert as a defense to any attempt by [Mother] to execute on the judgment that [Mother] had unreasonably delayed in attempting to collect the debt. But this defense does not prevent domestication of the judgment. Therefore, the court did not err rejecting the motion to dismiss."

4. Failure to Contest Registration - A Texas trial court did not err in registering for enforcement a Kentucky child support order under UIFSA, where the noncustodial father failed to timely contest the order's registration in the Texas court, the Texas Court of Appeals decided. The appellate court also held that the court's order confirming registration was silent as to the IV-D agency's administrative income withholding order. Thus, absent exhaustion of administrative remedies, the propriety of the IV-D income withholding order was not before the appellate court. *In re A.W.D.* (Tex.Ct.App., No. 07–12–00329–CV, 7/23/14) (memorandum decision).

a. In 2003, a Kentucky dissolution decree required Father to pay child support. Subsequently, the Texas Attorney General (IV-D agency) sought to register for enforcement that order in the Texas court. Father objected, saying that he was never notified of the Kentucky divorce action and had no contacts with the that state. Thus, he argued, the Kentucky dissolution court lacked personal jurisdiction over him and it could therefore not be registered for enforcement in Texas.

b. In support of his contention the Kentucky support order could not be registered, Father pointed to language in section 159.603, entitled "effect of registration for enforcement." Subsection (c) of section 159.603 reads: "Except as otherwise provided in this subchapter, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction." Father argued the language "if the issuing tribunal had jurisdiction" as conditioning the Texas court's power to recognize or enforce the foreign support order. Under his

argument, it was irrelevant whether he timely complied with the contest procedures under sections 159.606 and 159.607; because the Kentucky court lacked personal jurisdiction over him when it entered the support order, the Texas court could in no event recognize or enforce the order.

c. Rejecting Father's argument, the appellate court opined that Section 159.607(a)(1) specifically provides that a party contesting the validity or enforcement of a registered order on the ground the issuing tribunal lacked personal jurisdiction over him has the burden of proving the lack of jurisdiction as a defense. And section 159.606 explicitly ties the assertion of defenses under section 159.607 to the contest procedures, including the requirement to request a hearing within 20 days after notice of registration. Said the appellate court: "Whatever the meaning of the reference to the issuing tribunal's 'jurisdiction' in subsection 159.603(c), a question we need not consider further, we cannot agree the language of that subsection permits us to ignore the statute's requirements directly applicable to the defense [Father] sought to assert in the Texas court. We find instead the trial court was correct to apply the requirements of sections 159.606 and 159.607 as written."

d. The appellate court also ignored Father's complaint the IV-D agency sent an income withholding order to his employer, saying the trial court's order was absent any such order and Father had failed to exhaust his administrative remedies before seeking judicial recourse.

F. Service of Process - A Texas trial court did not err in refusing to register an Israeli child support order where the noncustodial father was not properly served with notice of the underlying order. Such failure deprived the Israeli court of personal jurisdiction to enter the support order, and thus the Texas court was not required to give the order full faith and credit under UIFSA. In addition, because of the lack of service, the order was not entitled to be recognized on grounds of comity, or enforced merely because doing so might be in the child's best interest. *In re E.H.*, 450 S.W.3d 166 (Tex.Ct.App. 2014), 41 FLR 1005.

1. In June 1993, Sara obtained a judgment for child support against Shlomo in Israel, after allegedly serving Shlomo with the suit by registered mail as provided under Israeli law. Shlomo was residing in Texas at the time. In 2011, the Texas Attorney General sought to register and enforce the Israeli order, including approximately $150,000 in unpaid support. Shlomo objected, saying he was never served with notice of the Israeli child support order, something the AG's office described as "Shlomo's bald assertion." The AG further argued that the order should be given full faith and credit or was otherwise was enforceable on grounds of comity. It further argued that enforcing the order would be in the child's best interest. The trial court denied registration, and the State appealed.

2. In rejecting the State's contentions, the appellate court stated, "[w]e disagree with the Attorney General that the Israeli record conclusively shows that Shlomo was served with Sara's support claim in the Israeli court in 1992 and therefore Shlomo is precluded from challenging the Israeli court's jurisdiction. . . . [T]he Israeli record shows that Sara and her advocate presented some evidence of service at a hearing on her support claim, but Shlomo denied that he was served and presented evidence that the record of the Israeli proceeding does not contain the proof of service through mail that Israeli law requires."

3. Accordingly, the appellate court held, the Israeli order was neither entitled to full faith and credit under UIFSA nor entitled to enforcement under comity. Moreover, it said, "although we recognize the important policy of the best interest of the child, we disagree that this policy should be a 'thumb on the scale' to authorize enforcement of a child support order against a party over whom the issuing court lacked personal jurisdiction or in violation of that party's due process rights. . . . Nothing in the statutory scheme suggests that a court may disregard evidence establishing a defense permitted under this section in favor of a best-interests analysis."

III. JURISDICTION TO MODIFY

A. All Parties Leave Issuing State -

1. Issuing State's Loss of CEJ -

   a. A California trial court erred in granting a noncustodial father's motion to modify a 2007 child support order it has issued, where all parties and the child had left the state and neither parent had consented to California's continuing jurisdiction to modify its order, the California Court of Appeals ruled. Once everyone had left California, it no longer had continuing exclusive jurisdiction to modify its own order absent the parties' consent. The trial court thus exceeded its jurisdiction in granting Father's modification request. *M. J. v. S. B.* (Cal.Ct.App., No. D065319, 1/16/15) (unpublished).

   b. An Oklahoma trial court lacked subject-matter jurisdiction to modify its prior child support order because the parties and their child do not reside in the state and the parties never agreed to its continuing jurisdiction, the Oklahoma Court of Civil Appeals, Division I, has ruled *Bazilewich v. Bazilewich*, 334 P.3d 958 (Okla.Civ.App., No. 2014), 2014 WL 4925706, 40 FLR 1581.

      (1) The parents were divorced in 1999 in Missouri, at which time Mother was awarded custody of the couple's minor child, born in 1998. In 2002, while Mother and the daughter lived in Oklahoma, Mother sought to modify the original Missouri decree in Rogers County, Oklahoma, due to the fact that Mother and

daughter were living in Oklahoma at the time. The court issued a child support order against Father and suspended his parenting time.

(2) In 2006, Father filed in Rogers County his petition to modify the 2002 order.[10] In its order, the trial court maintained custody with Mother, increased Father's child support obligation, made provisions for medical expenses and determined Father's arrearage, including interest. In 2006, neither Father, Mother, nor the daughter resided in Oklahoma. In addition, no one had filed a written consent to allow Oklahoma to assume modification jurisdiction. Father appealed.

(3) Reversing, the appellate court observed that, under UIFSA, "when all parties no longer live in the state that issued the subject order, and the parties have not filed consent to the court's jurisdiction, then the issuing state loses jurisdiction to modify the order when all parties have permanently left the issuing state." The court acknowledged that some cases have argued that the parties consented to jurisdiction by filing the modification in the issuing state and submitting to the court's authority throughout the hearing process. But, "without statutory authority," it said, "parties cannot confer subject matter jurisdiction by consent."

c. An Illinois trial court lacked jurisdiction to modify a support order it had issued, where all parties and the child had left the state, the Appellate Court of Illinois, Second District, ruled. Adopting the opinion of the majority of states that "once the obligor, the obligee, and the minor children no longer reside in the issuing state, that state lacks a sufficient nexus with the parties to justify modifying a support order," it also held that "until a different jurisdiction obtains continuing exclusive jurisdiction over a support order, Illinois, as the issuing state, retains jurisdiction to enforce that order." In so holding, the appellate court affirmed the trial court's dismissal of a noncustodial father's petition to modify support, but reversed the trial court's dismissal of Father's contempt action for Mother's failure to contribute to the minor's health insurance and travel expenses. *Collins v. Department of Health and Family Services ex rel. Paczek*, — N.E.3d — (Ill.Ct.App., No. 2–13–0536, 6/26/14).

d. A California trial court erred in modifying its own order after both parents and the child had left the state, the California Court of Appeal, Fourth District ruled. *Castro v. Haugh*, 225 Cal.App.4th 963, 170 Cal.Rptr.3d 683 (Cal.App. 4th Dist. 2014), 40 FLR 1279.

(1) In 2008, a California trial court ordered Father to pay Mother $700 per month in

[10] The opinion reflects Father's assertion that he has never resided in Oklahoma. Nevertheless, the propriety of the 2002 order does not appear to be questioned.

child support for their son. In 2007, Mother moved with their son from California to Texas. In or about 2011, Father moved from California to Nevada. In 2013, Father filed in California his request to modify the amount of his child support payments based on his reduced income. Mother opposed his request for modification, arguing the matter should be heard in the state of their son's residence (*i.e.*, Tex.) because none of the parties lived in California.

(2) The trial court granted Father's request. It noted that California had issued the original order and said that California "continues to have jurisdiction, until another state assumes jurisdiction. You don't leave a party without a forum." It further stated: "It's clear [that] California shouldn't continue to have it. But it does. That is — [it] should be in someone else's jurisdiction. But someone needs to take that affirmative step, whether Mother, Father, or [the State], [¶] I assume it's the Father, since he's the payor . . . ." The State appealed.

(3) Reversing, the appellate court observed that when everyone left the issuing state, California lost jurisdiction to modify. In support, the court quoted Section 205 of the 1996 Model Act, saying:

> Section 4909 is California's adoption of section 205 of the UIFSA. The drafter's comment to the 1996 version of section 205 of the UIFSA states in pertinent part:
>
> "This section is perhaps the most crucial provision in UIFSA. . . . [T]he issuing tribunal retains continuing, exclusive jurisdiction over a child support order, except in very narrowly defined circumstances. *As long as one of the individual parties or the child continues to reside in the issuing state, and as long as the parties do not agree to the contrary, the issuing tribunal has continuing, exclusive jurisdiction over its order — which in practical terms means that it may modify its order. . . .*
>
> "The other side of the coin follows logically. Just as Subsection (a)(1) defines the retention of continuing, exclusive jurisdiction, *by clear implication the subsection also defines how jurisdiction to modify may be lost. That is, if all the relevant persons — the obligor, the individual obligee, and the child — have permanently left the issuing state, the issuing state no longer has an appropriate nexus with the parties or child to justify exercise of jurisdiction to modify*. Further, the issuing tribunal has no current information about the factual circumstances of anyone involved, and the taxpayers of that state have no reason to expend public funds on the process. . . .

"According to the logical implication of Subsection (a)(2), the issuing state may also lose its continuing, exclusive jurisdiction to modify if the parties consent in writing for another state to assume jurisdiction to modify (even though one of the parties or the child continues to reside in the issuing state). . . ." (9 pt. IB West's U. Laws Ann., supra, U. Interstate Fam. Support Act, comment to § 205, pp. 340-341, italics added.)

(4) The court also held that such a view accorded with the Full Faith and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C. § 1738B) and numerous decisions from around the country.

2. "Play Away" Rule -

a. A Florida trial court that had domesticated a California child support order erred in modifying it because neither the custodial mother nor the child reside in Florida, that state's Fifth District Court of Appeal held. *Arquette v. Rutter*, 150 So.3d 1259 (Fla.Dist.Ct.App 2014), 2014 WL 6488784, 41 FLR 1060.

(1) The parties' California dissolution awarded Mother custody and required Father to pay child support. Thereafter, Father relocated to Florida and Mother and child to Georgia. In 2008, Father filed in Florida his request to domesticate and modify the child support order. The trial court granted his request. In 2012, Mother sought to vacate the judgment, contending that under UIFSA and FFCCSOA, the trial court lacked both personal and subject matter jurisdiction to modify the order, as neither she nor the child resided in Florida. The trial court denied Mother's motion and she appealed.

(2) Reversing, the appellate court acknowledged that when everyone left California, it lost continuing exclusive jurisdiction under UIFSA and FFCCSOA. This was not to suggest, however, that Florida was empowered to modify California's order. Nothing suggested that Florida had personal jurisdiction over the Mother or child, and Mother had not consented to Florida's modification jurisdiction. Accordingly, under both UIFSA and FFCCSOA, Florida lacked subject matter jurisdiction to modify California's order.

(3) Editor's comment - UIFSA (but not FFCCSOA) provides an additional basis to reverse the trial court, not discussed in the appellate decision: under UIFSA, the movant for the modification must be a non-resident of the state in which the modification is sought. Father's action brought in his own state of residence ignored this requirement.

b. A Hawaii trial court did not err in enforcing portions of its 2008 dissolution decree, even though everyone had left that state and Oklahoma had subsequently modified the order, the Hawaii Court of Appeals ruled. In the first place, Oklahoma's modification did not divest Hawaii of its subject matter jurisdiction to enforce obligations that had accrued prior to Oklahoma's modification. Secondly, Oklahoma's modification was itself void for lack of subject matter jurisdiction because the noncustodial father filed the action where he resided, rather than in the mother's state of residence, Texas. *Simental v. Simental*, 133 Hawai'i 510 (Haw.Ct.App., No. CAAP-12-0000656, 7/31/14) (unpublished disposition).

(1) The parties' 2008 Hawaii dissolution decree awarded Mother custody of the their two children and required Father to pay numerous expenses, including child support, a portion of Mother's medical insurance premiums, contribute to the children's college fund and maintain life insurance and disability policies for the benefit of the children. In 2009, the Hawaii dissolution court found that Father had failed to pay amounts due under his dissolution decree and reduced to judgment the $72,242.78 he owed.

(2) By 2009, Father had relocated to Oklahoma and Mother to Texas. Father filed in Oklahoma a request to modify custody and support, claiming that one of the parties' children resided with him. The Oklahoma court granted his request, and terminated Father's support order for the child in his custody. The parties' visitation rights were also modified to reflect the new custody arrangement. In 2012, Mother, filed in Hawaii her contempt action against Father for failing to pay certain debts under the dissolution decree, including the children's medical and dental expenses and contributions to the children's educational funds. (Mother's claim did not include an allegation of unpaid child support.) Father moved to dismiss, arguing that since Oklahoma had modified the support order and no one continued to reside in Hawaii, it no longer had jurisdiction to enforce the dissolution decree. The trial court denied Father's motion and entered orders. Father appealed.

(3) The appellate court affirmed. It observed that under Hawaii's UIFSA statute, an Oklahoma modification of the child support order that complied with the UIFSA would not divest the Hawaii court of jurisdiction (1) to enforce its order as to amounts accruing before the modification or (2) to provide relief for violations of its order occurring before the modification's effective date. Thus to the extent Mother's claims in Hawaii related to amounts accruing before Oklahoma's modification, Hawaii retained subject matter jurisdiction to enforce it.

(4) Moreover, amounts accruing under the order *after* Oklahoma's modification were also enforceable by the Hawaii dissolution court because the Oklahoma order was

not issued in compliance with UIFSA's modification scheme. Where both parties have left the issuing state, the movant for the modification must be a non-resident of the state in which the modification is sought. Here, Father, an Oklahoma resident, filed his request in Oklahoma; he should have filed his modification petition in Mother's state of residence, Texas. (Neither party had consented to Oklahoma's modification jurisdiction.) Because of his failure to follow UIFSA's modification procedure, the Hawaii tribunal was not divested of its subject matter jurisdiction to prospectively enforce its order.

(5) Editor's comment - The appellate court did not expressly discuss the impact of the Oklahoma custody modification on Hawaii's child support order.

B. <u>All Parties Move to Same New State</u> -

1. A California trial court had subject matter jurisdiction to modify a child support order it had issued, even though a motion to modify support had already been filed in Connecticut, which had issued the original support order involving these parties. *In re Marriage of Bailey and Nation* (Cal.App. 2 Dist., No. B246749, 5/5/14 (unpublished).

   a. In this case, the parties' 2007 Connecticut divorce awarded Mother custody and required Father to pay support. Thereafter, both parties moved to California, and the parties by agreement registered the order there. In 2010, the California court required Father to pay support in accord with their 2007 separation agreement. In 2012, the court modified custody and required Mother to pay support. Mother appealed.

   b. In rejecting Mother's contention that Connecticut retained jurisdiction to modify, the court opined that under both UIFSA and FCCSOA, once everyone had left Connecticut, it lost jurisdiction to modify. "[FFCCSOA] provides that a State may modify a child support order issued by a court of another State if the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant." 28 U.S.C. § 1738B(e)(2)(A). Under this provision, it said, California had jurisdiction to modify any order issued in Connecticut because Connecticut was no longer the residence of either party or the child. Such was consistent with UIFSA's modification rules.

2. A California trial court had subject matter jurisdiction to modify the parties' 2000 Mexican child support order, where the custodial mother and children relocated to California, and the noncustodial father failed to introduce sufficient evidence to rebut the mother's contention that he also had moved to California and no longer resided in Mexico. *Gonzalez v. Rebollo*, 226 Cal.App.4th 969 (Cal.Ct.App. 2014).

a. The parties' 2000 Mexican dissolution decree awarded custody of the parties' children to Mother and ordered Father to pay support. In 2012, Mother filed a petition to modify in the California court seeking to modify the support order. At trial, it was uncontroverted was Mother and her children had moved to California. Mother alleged that Father had also moved to California; Father asserted he remained a resident of Mexico. The trial court found that Father had failed to submit sufficient evidence to show he was still a resident of Mexico. Thus, because all parties were now California residents, California had subject matter jurisdiction to modify the Mexican child support order.

b. The appellate court observed that where everyone has left the issuing state and have moved to the same new state, either party may move for a modification in the new state. Family Code § 4962. Thus whether California could modify the Mexican child support order turned on whether Father introduced sufficient evidence to show his continued residence in Mexico. Based on the evidence before it, the appellate court held, it could not find error in the trial court's judgment.

C. Registration - An Alabama trial court's modification of a divorced couple's Hawaii child support orders was void where it lacked subject-matter jurisdiction because the orders were not registered in compliance with UIFSA, the Alabama Court of Civil Appeals ruled. In so holding, the appellate court observed that the noncustodial father, who had sought the modification, had submitted with his registration packet only one copy of the Hawaii child support orders instead of the required two. Even assuming he had filed the correct number of copies, Father's registration petition was still insufficient because it did not contain a sworn statement regarding any arrearage, but only his allegation that he was not in arrears.[11] In sum, Father failed to "strictly comply" with Alabama's registration requirements, warranting reversal of the trial court modification entry. *Herzog v. Stonerook*, — So.3d — (Ala.Civ.App., No. 2130030, 8/8/14), 2014 WL 3890944, 40 FLR 1493.

D. Written Consent to Transfer CEJ - A 2010 agreement executed by the parties in which matters pertaining to "parenting duties and obligations" would be transferred to New Jersey was not sufficiently clear so as to constitute written consent to allow New Jersey to modify a Pennsylvania child support order, the Superior Court of New Jersey held. The court also

[11] Section 30-3A-602, Ala. Code 1975, which is located in Part 1 of Article 6 of the UIFSA, outlines the procedure to be followed to register the support order of another state and provides, in pertinent part:
"(a) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the appropriate court in this state:
"(1) a letter of transmittal to the court requesting registration and enforcement;
"(2) two copies, including one certified copy, of all orders to be registered, including any modification of an order;
"(3) a sworn statement by the party seeking registration or a certified statement by the tribunal or collection agency showing the amount of any arrearage...."

observed that a 2011 Ohio consent order, which transferred "all matters affecting the minor children," to New Jersey, likewise failed to suffice to afford consent, since such order expressly referenced two New Jersey statutes related solely to custody. *Morgan v. Pfau* (Super.Ct. N.J., No. A-0678-13T1, 11/12/14), 2014 WL 6861277 (unpublished).

E. FFCCSOA - The federal Full Faith and Credit for Child Support Orders Act (FFCCSOA)[12] applied retroactively to nullify child support modifications prior to its enactment, the Nevada Supreme Court decided. Retroactive application serves the purposes for which Congress enacted it. *Holdaway-Foster (Brunell) v. Brunell*, 330 P.3d 471 (Nev. 2014), 40 FLR 1437.

1. The parties divorced in Nevada in 1985. The decree awarded Mother custody of the parties' two children and required Father to pay $200 in monthly child support. In 1989, the court modified Father's order to $625 per month. Subsequently, Father relocated to Hawaii while Mother and children remained in Nevada. Father allegedly ceased paying child support. Mother subsequently moved to register the Nevada order in Hawaii to collect current support and arrears. In 1992, the Hawaii court, at Father's request, reduced his order to $350 per month. In 1996, it reduced it again to $100 per month. Mother was notified of both modifications but did not appeal either order.

2. After the children had long reached the age of majority, Mother filed in Nevada a motion to determine the controlling order and for a judgment on the arrears. The Nevada court determined that it was powerless to review or modify the Hawaii orders because Mother had not contested them. Consequently, the trial court denied Mother's request to reduce the unpaid amount under the 1989 Nevada child support order to a judgment. Mother appealed, asserting that the Nevada support order is controlling under FFCCSOA.

3. In resolving the dispute, the high court first opined that FFCCSOA was silent as to its retroactive application. Nevertheless, the court opined, applying it prior to its effective date in 1994 was consistent with its three purposes: (1) facilitating enforcement of child support orders among the states; (2) discouraging continuing interstate controversies over child support; and (3) avoiding jurisdictional competition and conflict among state courts when establishing child support orders. The court went on to explain:

> A strict prospective application would frustrate the Act's purposes because the very issues that Congress designed the Act to resolve would persist. Interstate conflicts and controversies would continue regarding child support orders entered before enactment. Further, a prospective application likely would make enforcing

[12]The Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B (Added Pub. L. 103–383, § 3(a), Oct. 20, 1994, 108 Stat. 4064; amended Pub. L. 104–193, title III, § 322, Aug. 22, 1996, 110 Stat. 2221; Pub. L. 105–33, title V, § 5554, Aug. 5, 1997, 111 Stat. 636).

> child support orders more difficult because orders entered before the Act's effective date would be subject to different procedural rules than those entered after that date. Additionally, the Act is remedial in nature because it was designed to assist in collecting past child support arrears.

Id. at 474.

4. Having concluded that FFCCOA applied retroactively, the court explained that because Mother and her children (during their minority) continued to reside in Nevada, Hawaii was powerless to modify Nevada's order without consent, which did not exist. Moreover, it said, "[Mother's] failure to formally object to the Hawaii modifications is immaterial because a challenge to a court's subject matter jurisdiction is not waivable, unless by written consent, and can be raised at any time, or reviewed sua sponte by an appellate court." Concluding that the Nevada order controlled, it remanded for a determination of whether equitable defenses, such as waiver and estoppel, were available to Father under the facts of the case.

F. Redirection of Payments - An Arkansas court erred in refusing to register for enforcement a Kansas custody and child support order under the UCCJEA, even though Kansas had retained jurisdiction to entertain the noncustodial father's pending custody action, the Arkansas Court of Appeals, Division I, decided. In so holding, the appellate court opined that the mother was merely seeking to register for enforcement her Kansas custody order. Her request to change the child support payment clearinghouse from Kansas to Arkansas, the court said, was "ministerial in nature" and thus was not a request to modify child custody. *Harter v. Szykowny*, — S.W.3d — (Ark.Ct.App., No. CV-14-185, 12/10/14), 41 FLR 1084.

G. Spousal Support - A Connecticut trial court erred in holding that it lacked subject matter jurisdiction to entertain a man's petition to modify the spousal support order it had entered because no one continued to reside there, the Appellate Court of Connecticut deecided. In so holding, the court observed that modification rules governing child support under UIFSA are different from those controlling spousal support. Under UIFSA, only a tribunal of the state that issues a spousal support order may modify that order. *Hornblower v. Hornblower*, 94 A.3d 1218 (Conn.Ct.App. 2014), 40 FLR 1413. Said the appellate court:

> Authority to modify a spousal support order is permanently reserved to the issuing tribunal. This principle is further explicated in the comment to UIFSA § 211, which explains: ''Under UIFSA . . . only the tribunal in the original issuing State may modify the order under its law. . . . The prohibition of modification of spousal support by a nonissuing state tribunal under UIFSA is consistent with the principle that a tribunal should apply local law to such cases to insure efficient handling and to minimize choice of law problems. Avoiding conflict of law problems is almost impossible if spousal support orders are subject to modification in a second state.''

IV. CHOICE OF LAW

A. Duration of Support -

1. A Texas trial court lacked subject matter jurisdiction to extend the duration or otherwise modify support for the parties' adult disabled child, where the child was the subject of New York child support order and the noncustodial father continued to live there, the Texas Court of Appeals ruled. Holding that UIFSA's modification rules do not allow modification of another state's order when a parent continues to reside in the issuing state, the court also opined that the custodial mother could not ask Texas to issue a "new" order by simply failing to register the New York child support order. *In re Martinez*, 450 S.W.3d 157 (Tex.Ct.App. 2014), 2014 WL 5151282, 40 FLR 1602.

   a. The parties divorced in New York in 1995. The decree awarded Mother custody and required Father to pay support. The parties' settlement and the divorce decree provided that the child would become emancipated when she reached the age of twenty-one or completed four years of college, whichever came last, but in no event past the age of twenty-two.

   b. In 1998, the child was in an automobile accident and as a result "became pretty much quadriplegic." In 2006, Mother moved to Texas with the child, as the warmer weather was better for the child's health. Shortly before the child's twenty-first birthday, Mother filed a petition in New York seeking to modify Father's support order based on the child's disability. However, as the parties stipulated, New York law does not provide for support of adult disabled children. It therefore refused to extend support beyond the child's 22nd birthday, February 13, 2013.

   c. After failing in her attempt to obtain a modification of the child support obligation in New York, Mother filed in Texas what she designated an original petition in a suit affecting the parent child-relationship. In the petition, Mother sought the same relief that had been denied her in New York — child support beyond the child's twenty-second birthday based on her disability status. In response, Father filed an objection to the Texas court's subject matter jurisdiction to modify the New York order. The trial court denied Father's objection and ordered him to pay support. Father then filed a petition for writ of mandamus and request for emergency stay. The appellate court granted the stay, and subsequently granted the writ.[13]

[13] The appellate court acknowledged that "mandamus is an extraordinary remedy that generally issues only to correct a clear abuse of discretion or a violation of a duty imposed by law when there is no adequate remedy by appeal. With respect to factual matters, we must not substitute our judgment for that of the trial court. However, such deference does not apply to the determination of what the law is or applying it to the facts of a particular case. A trial court abuses its discretion when it errs in determining what the law is or in applying the law to the undisputed facts."

d. In granting Father's writ, the appellate court observed that under UIFSA, where the obligor, obligee or child continue to reside in the issuing state, another state is precluded from modifying the order absent consent. Accordingly, because Father continued to reside in New York and had not consented to a Texas modification, the Texas court lacked subject matter jurisdiction to modify the New York child support order.

e. Mother attempted to circumvent UIFSA's modification rules by arguing the action she filed in the Texas trial court was an "original" action as opposed to a modification. Mother had two bases for this assertion. First, she contended her action was per force an original action because the New York decree terminated pursuant to its own provisions before she filed suit in Texas. Thus, according to Mother, there was no decree to modify. Second, Mother contended that because she never registered the New York decree in Texas, her Texas suit was an original action as opposed to a modification. The trial court accepted both of Mother's assertions. The appellate court did not.

f. First, the appellate court observed, the state's UIFSA statute provides that a Texas court "may not modify any aspect of a child support order, *including the duration of the obligation of support*, that may not be modified under the law of the issuing state." Tex. Fam. Code Ann. § 159.611(c) (emphasis added by the Texas Ct.App.). Indeed, the court observed, UIFSA's Official Comments explain the rationale for this rule:

> The 2003 amendment to Subsection (c) . . . [is] designed to eliminate scattered attempts to subvert a significant policy decision made when UIFSA was first promulgated. Prior to 1993, American case law was thoroughly in chaos over modification of the duration of a child-support obligation when an obligor or obligee moved from one state to another state and the states had different ages for the duration of child support.
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> * * *
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> From its original promulgation, UIFSA determined that the duration of a child-support obligation should be fixed by the controlling order. If the language was insufficiently specific before . . . 2003, the amendments should make this decision absolutely clear. The original time frame for support is not modifiable unless the law of the controlling State provides for modification of its duration. . . .
>
> Some courts have sought to subvert this policy by holding that completion of the obligation to support a child . . . established by the now-completed controlling order does not preclude the imposition of a new obligation

> thereafter . . . Subsection [(e)] is designed to eliminate these attempts to create multiple, albeit successive, support obligations.

Commissioner's Official Comment to UIFSA Section 611, reprinted in Sampson & Tindall's Texas Family Code Annotated § 159.611 (2013 ed.) (citations omitted).

g. Next, the appellate court rejected Mother's attempt to circumvent UIFSA's modification rules merely by failing to register the order. Said the court:

> This contention defies the policies underlying UIFSA. If [Mother] is correct, any party could circumvent the modification rules under UIFSA by simply refusing to register the foreign support order and filing an "original" action. This does not comport with the purpose of UIFSA, which is to maintain a "one-order-at-a-time world," ensuring that only a single controlling support order exists and is enforced consistently among the states.

h. In conclusion, the appellate court conditionally granted the writ and gave the trial court ten days to vacate its orders, lest the writ would issue as a final order.

2. An Oregon trial court did not err in applying Oregon law when establishing paternity and support for a child born during a man's marriage to his former wife, where his Louisiana dissolution decree did not address the child or provide for his support, the Oregon Court of Appeals ruled. The Father contended that the court erred in ordering that child support extend potentially until the child is 21 years old. In support, Father cited a Louisiana statute that requires support to end when a child completes high school. The appellate court rejected Father's argument, saying that his contention that Louisiana law applies to the duration of support is based on the erroneous assumption that Oregon was modifying the Louisiana dissolution order. To the contrary, because the dissolution decree did not even mention the child, let alone establish support, the decree was not a "support order" under UIFSA. Thus Oregon was establishing a new order, and Oregon's substantive law under its support guidelines applied. *State ex. rel. Simons v. Simons*, 336 P.3d 557 (Or.Ct.App. 2014), 40 FLR 1564. (This case is more fully discussed in *Jurisdiction to Establish Paternity and Support*, this outline.)

3. A court-approved New Jersey agreement that extended duration beyond that which was required under the law of Connecticut, which had entered the order, was enforceable under ordinary contract law, the Superior Court of Connecticut ruled. While the court acknowledged that it lacked statutory authority under UIFSA to alter Connecticut's age of emancipation, "parents are free to contract for higher obligations than might otherwise be required of them by law." The court added, however, that it appeared the statutory requisites for Connecticut to modify the New Jersey order are satisfied, should the

appropriate petition be filed. *Townsend v. Townsend* (Conn.Super., No. FA974071202S, 7/15/14), 2014 WL 4099327 (unpublished).[14]

a. A 1998 Connecticut dissolution decree required the noncustodial father to pay support. The decree, which incorporated the parties' property settlement agreement, was silent on the duration of support. Following the dissolution, everyone left Connecticut and Mother and the child moved to New Jersey. In 2001, the parties entered into a consent decree in New Jersey that defined emancipation beyond the period provided under Connecticut law, including "(A) The child's reaching the age of eighteen (18) years or at the completion of four (4) years of college education, whichever occurs last."

b. Father subsequently filed in Connecticut his motion to nullify the New Jersey order or to modify it. The Superior Court denied Father's motion to nullify the Connecticut order. The court opined that the parties consented to New Jersey's modification by entering into an agreed order there. Father correctly asserted that New Jersey lacked any statutory authority under UIFSA to modify the duration of support. Nevertheless, the parties were free to contract for additional support than the law otherwise provides. Said the court:

> Parents are free to contract for higher obligations than might otherwise be required of them [by law] ... These contracts are in the public interest and should be enforced at least as strictly as other contracts ... When the parties have reached an agreement and the ... court has approved it, [courts will] enforce it and take [a] dim ... view of efforts to modify it, just as when parties seek relief from other contractual obligations.
>
> * * *
>
> In the present case, although New Jersey could not have ordered the defendant to pay child support beyond the child's high school graduation, as provided by Connecticut law, the New Jersey court had no reason to disapprove of the defendant's voluntary agreement to pay child support beyond the age required by Connecticut law. It is in the interest of society that the child be supported by those obligated to support the child and that the child not be required to seek public assistance to satisfy those needs unless otherwise necessary. To deny a parent the right to enter into a contract under which that parent takes on obligations beyond those required of him/her would be contrary to that public interest.

[14] The opinion does not appear to be available on the internet. However, the case is published in Westlaw, 2014 WL 4099327.

> Therefore, because the modified New Jersey order was a voluntary consent order, agreed upon by both parties, who were represented by counsel at the time of signing the consent order, New Jersey properly allowed the duration of the original child support order to be extended beyond what could typically be ordered under Connecticut law.

Id. at 4-5.

c. The court held, however, that Connecticut could now modify the New Jersey order. It observed that none of the parties are residents of New Jersey, that Father as a non-resident was seeking the modification, and that Connecticut had personal jurisdiction over Mother by having been served in the state on Father's petition, upon which she filed a general appearance. Whether there has been a substantial change in the circumstances of a party that would warrant a modification of child support under Connecticut law " is a question that can only be addressed if and when such motion is brought properly before a Connecticut tribunal."[15]

B. <u>Statutes of Limitation</u> -

1. A Guam trial court erred in failing to enforce the child support arrearage in a 1987 Alaska dissolution that required a noncustodial father to pay child support, the Supreme Court of the Territory of Guam ruled. First, it held that under UIFSA, the nature of the child support order is governed by the law of Alaska, which had issued the order, not Guam law; once registered, however, Guam law governs the manner of enforcement. Second, Guam's UIFSA provides that "[i]n a proceeding for arrearages, the statute of limitation under the laws of Guam or of the issuing state, whichever is longer, applies." 5 GCA § 35604(b). Holding that the statute of limitations for missed child support payments is "essentially an unlimited time period in Alaska,"[16] Guam was not barred

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[15]The appellate court observed that Father had neither formally moved to register the New Jersey order for modification nor presented any additional evidence of a substantial change in circumstances.

[16]Said the court:

> The Alaska Supreme Court has recognized that, as in the majority of jurisdictions, Alaska considers periodic child support obligations judgments that vest when an installment becomes due but remains unpaid. The court explained that each unpaid child support obligation is considered a judgment because child support arrearages are not subject to retroactive modification. The right to the payment of support becomes vested as it becomes due. Thus an order of child support is essentially a judgment in installments. Accordingly, in Alaska, the ten-year limit on bringing an action upon a judgment does not apply in child support cases. The ten-year Alaskan collection statute applies only when litigants "bring an action," usually by way of a complaint. The statute does not apply when the Child Support Enforcement Division is seeking to collect on a valid judgment.

Harper v. Harper, 2014 Guam 9 (Guam May 5, 2014) (quotations and internal citations omitted).

from determining Father's child support arrearage and enforcing the order "in the same manner and is subject to the same procedures as an order issued by a tribunal of Guam." The appellate court remanded the case to the trial court to allow Father to present his defense of full or partial payment. *Harper v. Harper*, 2014 Guam 9 (Guam, No. CVA13–010, 5/5/14), 2014 WL 1758367.

2. A Michigan trial court properly exercised jurisdiction to enforce a child support arrearage that had accrued under a Netherlands order. Because the noncustodial father failed to allege a statute of limitations defense at the time the Michigan court confirmed the order, he had waived the issue on appeal. In addition, the appellate court noted, Father had extended the limitations period by making payments under the order. Finally, the court rejected Farther's argument that "simple equity" foreclosed enforcement, saying "the policy rationale behind requiring a party to timely assert affirmative defenses is to prevent the adverse party from being unfairly surprised." *Methorst v. Verkerk*, (Mich.Ct.App., No. 307073, 4/24/14) (unpublished).