NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
DIVISION OF LEGAL AFFAIRS

2023 UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA) REVIEW

NYPWA Winter Conference
January 24, 2024
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GREETINGS: This is a review of the significant UIFSA case law from 2023.

INDEX

*** = unpublished decision

New York

Ritchey v. Ritchey, 218 A.D.3d 617 (2nd Dept., 2023) The parties were divorced by judgment entered January 29, 2009, as amended February 1, 2011, which incorporated, but did not merge, a stipulation of settlement dated September 4, 2008, in which the parties agreed to certain child support provisions with respect to their four minor children. The judgment of divorce, as amended, included a provision stating that the Supreme Court would retain jurisdiction concurrently with the Family Court to enforce the provisions of the parties' stipulation of settlement. The parties subsequently entered into a so-ordered stipulation dated August 27, 2012, in which they agreed to certain modifications to their respective child support obligations. As of approximately 2016, both of the parties and all of their children were residing in the state of Rhode Island.

By order to show cause dated November 18, 2020, the mother moved in Suffolk County Supreme Court to enforce the child support provisions of the so-ordered stipulation. The father opposed the motion on the merits, without raising an objection to jurisdiction. Thereafter, the mother moved to modify the father's child support obligation. In an order dated September 27, 2021, the Supreme Court denied both motions without prejudice to bringing them in the appropriate court in Rhode Island. The mother appealed.

The Appellate Division, citing the UIFSA, found that with respect to the mother's motion enforce the child support provisions of the so-ordered stipulation, the Supreme Court had personal jurisdiction over the father because, among other things, he appeared and opposed the mother's motion without raising an objection as to jurisdiction. Under the circumstances of this case, the court had continuing jurisdiction to enforce its support order. To the extent the court relied on the doctrine of forum non conveniens, it erred in raising the issue sua sponte. The order was reversed and remitted to the Supreme Court for a determination on the merits of the mother's motion to enforce the child support provisions of the so-ordered stipulation. (The appeal of the modification was dismissed for failure to provide a complete record on appeal).

Other States' Cases

Ho v. Washburn, 2023 WL 7646099 (Conn. Super. Ct. Feb. 6, 2023) The parties had one child and resided in New York State in 2017 when an order of support was entered there, directing the father to pay to the mother $397.00 per week in child support and an additional $100 towards arrears. The father's income was $214,000 per year at that time. The parties thereafter relocated, the father to Wyoming and the mother and child to Connecticut. After registration in Connecticut of the New York child support order, the father made a motion to modify the order under the UIFSA because he lost his job.

The court explained that the New York child support order was properly registered in Connecticut where the mother and child resided. Neither the child nor the mother resided in New

York, where the subject order was issued. Additionally, the mother was subject to the jurisdiction of the State of Connecticut. The father, the moving party, was a non-resident of Connecticut. Accordingly, his motion was properly brought in Connecticut and Connecticut law governed the case under the UIFSA. The child support order to be modified was subject to the same requirements, procedures, and defenses as those orders of modification of child support issued by the courts of Connecticut.

Connecticut General Statutes § 46b-86 governs modification of a child support order when there is a substantial change of circumstances of either party. Thus, the child support order may be applied retroactively only to the date of return of service, December 10, 2020. The court held that there could be no consideration given to retroactively adjusting a child support order issued by New York prior to the return date of motion.

***Covert v. Drake, 2023 WL 1870898 (Ky. Ct. App. Feb. 10, 2023) The parties were married in 1996 in North Carolina and had two children. In 2004, they were living in Massachusetts when the parties divorced. In their written Settlement Agreement (SA), they resolved the issues of property division, child custody, parenting time, and child support. The relevant portions of the SA required the father to pay the mother child support until such time as the children are emancipated under Massachusetts law.

The parties eventually and separately relocated to Kentucky. In 2019, the father filed a motion for the family court to determine if his child support obligation should continue for the parties' adult children. The family court ordered mediation regarding the issue of child support, and on September 18, 2019, an agreed order was entered in which the "child support amount established by prior order shall remain unchanged." When the agreed order was entered, the oldest child had been emancipated under Massachusetts (and Kentucky) law, having graduated from high school and discontinuing his college education. The youngest child was close to completion of his senior year of high school. The agreed order reserved the issue of support for the youngest child.

In March 2020, the father filed a motion to reduce his child support based on a change in circumstances. He argued his income had been drastically reduced since the September 2019 agreed order. Some of the reduction may have resulted from the economic impacts of the pandemic. The mother then asked the court to order him to pay 50% of their youngest son's college expenses, citing their SA and Massachusetts law. The mother had contributed to the college expense without contribution (separate from child support) from the father for the first year of college. The father then requested a termination of his child support obligation, arguing he should not be obligated to continue paying child support for the youngest. At the time of these later motions and the hearings on them, the child was over eighteen years old. The father also argued Kentucky law should apply to the continuation of child support, despite the SA and the subsequent agreed order.

The family court held Massachusetts law governed the child's emancipation date and thus the duration of the child support obligation, while Kentucky law controlled the amount of child support to be paid. The family court also concluded the SA and applicable Massachusetts law applied to the SA directed the parties each to contribute to their son's college education. The family court ruled the following language in the SA: "College contribution shall be determined if

and when the children apply to college[,]" evidenced an agreement of the parties to contribute to their children's college education.

The court found that the son was not yet emancipated under Massachusetts law and the parties' SA, because he was still enrolled in college. As a result, the father was still obligated to pay child support. The parties disagreed as to the amount of the father's annual income, but the family court found his gross monthly income to be $9,150.00 per month. The mother had previously been imputed partial ability to work at $628.00 per month.

Based upon the combined income of the parties ($9,778.00), the child support from the Kentucky guidelines was $996.00. The father's share was 94%, or $936.24. Because this is greater than a 15% change from the previous ordered amount of $1,248.00 per month, the family court reduced his child support obligation to $996.00 per month. The family court further reduced the father's child support obligation by 25%, as allowed by Massachusetts law which provides child support is reduced by 25% when paid for a child over the age of 18. This reduction led to a final amount of $702.00 per month. The father subsequently filed a motion to alter, amend, or vacate, which was denied by the family court. He appealed.

On appeal, the father argued the family court erred in reducing, rather than terminating his child support obligation, although reduction is what he initially sought. He also claimed error in ordering him to contribute to the college expenses.

The Court of Appeals opined that Kentucky's UIFSA choice-of-law provisions make it clear that duration of support is a matter of law of the issuing state because that is a non-modifiable aspect of the issuing state's order. Under Massachusetts law, the child had not been emancipated, because he was enrolled in college, and therefore the continuing child support obligation ordered by the family court was not erroneous.

The Court of Appeals held that it is logical for questions about the amount of child support to be determined by the current state of residence of the parties. Recognizing that the father was being required to contribute to college expenses because of Massachusetts law, while Kentucky law would not require contribution at all for college expenses, the family court adjusted the child support down as allowed under Massachusetts law. The family court did not have to do so. In doing so, the family court acted equitably to reach an appropriate amount for the child support. This was not an abuse of discretion by the family court when evaluating the amount of the child support reduction.

The question of whether the father was obligated to contribute to college expenses was also to be decided under Massachusetts law per the parties' SA. Massachusetts law allows, but does not require, parents contribute to their adult children's college educations. It is within a judge's discretion to make an order relating to the payment of college expenses. In this case, the SA contained the mandatory "shall" when providing that the parents (or a court if they cannot agree) will determine the obligation for college education expenses when the day for such expenses comes. The family court heard the testimony and reviewed the evidence provided by the parties and determined the parties should each be required to pay 50% of college expenses, after any application of financial aid or scholarships. In doing so, the family court considered those factors

set forth in Massachusetts law when assessing the amount of college expense contribution as clearly indicated by the family court's written orders. Therefore, the decision of the lower court was affirmed.

***In re Marriage of Kibler, 2023 WL 2576937 (Ariz. Ct. App. Mar. 20, 2023). In May 2019, the wife filed a request to register in Arizona a North Carolina court's divorce judgment and October 2010 contempt order, but it was never registered. Later that month, she filed a petition for civil contempt, seeking to enforce the terms of the contempt order. The petition requested $367,250 for past-due spousal maintenance, plus interest, as well as over $83,000 in amounts still owed on the contempt order. The trial court held a trial in February 2020. After receiving testimony and evidence from both parties, the court ordered the husband to pay $325,000 into the trust account held by the wife's attorney.

In September 2020, the wife filed a petition to enforce the North Carolina court's support decree This petition requested $625,319 in unpaid fees and costs from prior judgments and spousal maintenance arrears, plus attorney fees incurred in her efforts to prosecute and enforce those judgments. The husband moved to dismiss, claiming that the wife had failed to properly register an authenticated or certified copy of the support decree in Arizona and that North Carolina's ten-year statute of limitations had expired. He also filed a petition to modify spousal maintenance, claiming his social security disability income limited his ability to pay spousal support.

The trial court ordered the wife to register the support decree in Arizona to avoid dismissal of her petition to enforce it. She did so in December 2020. In May 2021, after a hearing, the court reduced the husband's spousal maintenance obligation but denied his motion to dismiss.
In July 2021, after the case was reassigned to a new judge due to the prior judge's retirement, the trial court modified the May 2021 order and noted that the February 2020 order requiring the husband to pay $325,000 had failed to specify which judgments had been satisfied by that payment. It therefore allocated that payment to various purge conditions listed in the contempt order, totaling $235,319.90. The court further concluded that the husband was entitled to an $89,680.10 credit to be "applied first to any interest that may have been owed on the obligations" satisfied by the $325,000 payment, and then to the spousal maintenance arrearage.

The trial court determined that Arizona's statute of limitations period had not yet begun to run on the wife's request for support arrearages and she therefore was entitled to seek judgment on the full unpaid spousal support balance. The husband's motion to dismiss was denied. The trial court also vacated the portion of the May 2021 order reducing the husband's monthly spousal maintenance obligation and ordered the parties to present further testimony and evidence at the forthcoming evidentiary hearing to finalize that matter.

After an evidentiary hearing, the trial court also concluded that it lacked jurisdiction to consider the father's petition to modify spousal maintenance, reasoning that Arizona's UIFSA allowed it to enforce, but not modify, a foreign spousal support decree. It specifically noted that the husband had "taken an unreasonable position" in the matter; had unreasonably failed to pay spousal maintenance for over eleven years and had failed to act in any way to satisfy the 2008 support decree's requirement that he pay maintenance despite being aware of it.

The husband appealed, maintaining that the April 2008 North Carolina support decree is subject to enforcement in Arizona only under A.R.S. §§ 12-1701 to 12-1708, the Revised Uniform Enforcement of Foreign Judgments Act (RUEFJA). He claimed that the wife registered the foreign judgment pursuant to § 12-1702 and that, under that act, the foreign judgment was subject to a four-year statute of limitations period under A.R.S. § 12-544(3) and was therefore time-barred.

The Appellate Court noted that it was not clear from the record exactly how the wife registered the April 2008 support decree in Arizona, but that the record contained enough support for a conclusion that the judgment was entered in accordance with Arizona's UIFSA, in particular as set forth by §§ 25-1301 to 25-1303. In its January 2022 judgment, the trial court expressly found that the April 2008 support decree had been registered "[i]n compliance with the Uniform Interstate Family Support Act," providing it with "jurisdiction to enforce the current spousal maintenance orders," specifically under § 25-1303. It further reasoned that, under §§ 25-1301 to 25-1307, foreign spousal maintenance orders may not be registered for modification purposes. Thus, it concluded the court had lacked the authority in May 2021 to decrease the husband's monthly support obligation, and it denied any other request to modify the 2008 North Carolina support decree.

The Appellate Court also noted that although it could not definitively identify the statutory basis for the wife's registration of the foreign support decree, it could still conclude that the decree was not subject to the statute of limitations set forth by § 12-544(3). That statute sets a four-year limitation on actions "[u]pon a judgment or decree of a court rendered without the state" but does "not apply to a judgment for support, as defined in § 25-500." Section 25-500(9), in turn, defines "support" as the "provision of maintenance or subsistence," including "arrearages, interest on arrearages, past support," and "interest on past support." Although the father argued this section applied only to child-related support, the Appellate Court had previously stated that it applies to spousal support as well. It also rejected the husband's ancillary argument that the second sentence of § 25-500(9) implies that spousal support falls within the definition of "support" only when contained within a child support order. The relevant sentence reads: "In a title IV-D case, support includes spousal maintenance that is included in the same order that directs child support." The UIFSA separately defines as a "[s]upport order" any "judgment, decree, order, decision or directive, ... issued in a state or foreign country for the benefit of a child, a spouse or a former spouse, that provides for monetary support, ... [or] arrearages," including "related costs and fees, interest, ... reasonable attorney fees and other relief." Considering the related family support statutes as well as the relevant case law, the Appellate Court declined to accept the husband's attempt to narrow the definitions.

***Koch v. Lee, 2023 WL 4572586, (Conn. Super. Ct. June 29, 2023) The parties had resided in New York, but later relocated with the children to Connecticut. The mother petitioned for the court to issue a declaratory judgment that the New York child support guidelines be applied in deciding the father's motion for modification, post-judgment, in which the father sought to modify his child support obligation under the parties' April 16, 2016 New York dissolution judgment and their January 13, 2016 stipulation of settlement incorporated therein by reference. The father argued that the court must apply the Connecticut child support guidelines.

Under Connecticut General Statutes § 46b-71(b). "[W]hen modifying a foreign matrimonial judgment, the courts of this state must apply the substantive law of the foreign jurisdiction, and failure to do so constitutes plain error." The father argued that Connecticut law and the UIFSA conflict and the UIFSA controls.

The Superior Court found that there was no statutory conflict. Under UIFSA section 611, the court would apply the substantive law of the responding state (Conn.) including its guidelines. But when the parties and child all reside in responding state, only the procedural sections of UIFSA apply (UIFSA section 613). This being the case, the court looks to Connecticut law, which in this case applies the substantive law of the issuing state (NY) (General Statutes § 46b-71(b) mandates that "the substantive law of the foreign jurisdiction shall be controlling,"). The court properly applied the New York child support guidelines to determine the mother's motion for modification.

Hilyard v. Johnston, 511 Mich. 1078 (2023) The parties were divorced in 2005 while living in New York. The NY Supreme Court for the County of Cattaraugus granted the mother sole legal and physical custody of the parties' two children and ordered the father to pay $581 per month in child support.

In 2010, the mother moved with the children to Michigan. In 2016, the father registered the judgment of divorce there. In 2019, on the day after the parties' youngest child turned 18, the father sent a letter to the mother stating that he was stopping the child support payments because the parties had verbally agreed when they signed the judgment of divorce that support payments would stop when both children turned 18. On that basis, she registered the NY child support order with Michigan and served the father with notice of the registration. The Circuit Court confirmed the registration on December 16, 2019.

The mother then filed a petition to enforce the support order, arguing that the parties had not agreed to terminate support payments when the children turned 18, and that NY law required the payments to continue until the children turned 21. The Circuit Court held a hearing on the petition and determined that the court did not have personal jurisdiction over the father. The mother argued that only the father could assert personal jurisdiction as a defense, and that he failed at that time to participate in the proceedings. However, the Court determined that the UIFSA allowed the Court to determine whether it had personal jurisdiction over a non-registering party before the out-of-state support order could be registered. The Court determined that the out-of-state support order had not been properly registered and vacated the December order confirming the registration.

On appeal, the mother argued that the trial court could not sua sponte raise the issue of personal jurisdiction and, alternatively, that the Court could have exercised personal jurisdiction over respondent pursuant to Michigan's long-arm statute. The Court of Appeals of Michigan disagreed, explaining that although generally a party must raise a defense of personal jurisdiction in a responsive pleading or else the defense is waived for that party, this does not interfere with the court's continuing obligation to sua sponte question its own jurisdiction. The Court held that the trial court did not err by addressing the issue of personal jurisdiction sua sponte.

Next, the mother contended that the trial court could have exercised jurisdiction over the father under Michigan's long-arm statute. The Court again disagreed. She contended that, because the father hired a Michigan attorney in 2016, registered the judgment of divorce with the Circuit Court at that time, and moved to prevent her from taking the children to Mexico, he transacted business in the state. However, the trial court noted that the 2016 filings related to a custody issue and were therefore governed by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA). Therefore, the father did not submit to the trial court's personal jurisdiction.

The mother also argued that the trial court could exercise personal jurisdiction over the father because of his 2019 letter to her. She argued that his refusal to make child support payments had consequence in Michigan. Both NY and Michigan impose statutory duties on parents to support their children. Under NY law, that obligation lasts until the child turns 21, while in Michigan, the support obligation generally ends when the child turns 18. Both children in this case were over the age of 18, and therefore, the Court of Appeals held that the father's failure to pay child support did not give rise to an actionable tort under Michigan law. The mother appealed again.

The Supreme Court of Michigan held that the Court of Appeals erred by affirming the Circuit Court's finding that it lacked personal jurisdiction over the father under Michigan's long-arm statute, MCL 600.705. The Circuit Court improperly construed this section of the UIFSA and failed to conduct the necessary minimum contacts analysis prior to determining that it lacked personal jurisdiction. Accordingly, it was premature for the circuit court to vacate the registration of the out-of-state support order.

The Supreme Court reasoned that pursuant to the UIFSA's catch-all provision regarding personal jurisdiction, a forum state may exercise personal jurisdiction over petitions for enforcement of out-of-state support claims, such as the mother's claim for child support under NYS law, if "[t]here is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction." MCL 552.2201(1)(h). A constitutional basis for the exercise of personal jurisdiction exists where a respondent has sufficient minimum contacts with Michigan. The Court stated :

> "Traditionally, personal jurisdiction involves 'a two-fold inquiry: (1) do the [respondent's] acts fall within the applicable long-arm statute, and (2) does the exercise of jurisdiction over the [respondent] comport with due process?' But where, as here, the statute includes a catch-all provision that only requires a court to consider constitutional due process, the two inquiries collapse into a single inquiry regarding minimum contacts."

Accordingly, the lower courts' analyses under Michigan's long-arm statute and its independent statutory basis for personal jurisdiction was unnecessary—personal jurisdiction may exist regardless of whether the father's actions satisfy any provision of MCL 600.705. Rather, the circuit court was obligated under MCL 552.2201(1)(h) to analyze whether due process is satisfied here by determining whether sufficient minimum contacts existed using the three-part test: 1. the [respondent] must purposefully act in or towards the state, thus availing himself of the protection and benefits of its laws; 2. the cause of action must arise from the [respondent's] activities in the state; and 3. the [respondent's] activities must be substantially connected with the

state so that the exercise of personal jurisdiction over him would be reasonable. Therefore, the Supreme Court remanded the case to the Circuit Court to conduct the proper analysis.

***Brevetti v. Brevetti, 2023 WL 4633398 (Ariz. Ct. App. July 20, 2023)The parties were married in 2010 and had three minor children. The children lived mainly with the mother in Florida from 2012 to 2018, when she and the children moved to Arizona. The father lived mainly in Italy and moved to California in October 2017.

In 2018, Florida acquired original, continuing jurisdiction over the children under the UCCJEA when the mother petitioned for dissolution in Florida. As a result, Florida issued a temporary parenting plan granting her sole legal decision-making and the father parenting time as agreed by the parents. The Florida court also established the father's child support obligation. While the mother's petition for dissolution was still pending in Florida, she and the children moved to Arizona. The father tried to visit the children, but the mother consistently denied him access. Because of her actions, the Florida court found the mother in contempt and awarded the father make-up parenting time.

The Arizona superior court became involved in February 2020, when the father tried to register the temporary Florida orders in Arizona. His filings prompted the superior court to hold a UCCJEA conference with the Florida court in July 2020. During the UCCJEA conference, the Florida and Arizona courts agreed Florida would keep jurisdiction until either party registered a final Florida decree in Arizona. At that point, Florida would cede jurisdiction to Arizona. In October 2020, the Florida court entered an “Amended Final Judgment of Dissolution of Marriage,” dissolving the marriage and approving the original 2018 parenting plan and child support orders.

About six months later, on March 2, 2021, the father registered the Florida Amended Final Judgment in Arizona. He then filed a motion for temporary orders; an amended petition to modify legal decision-making, parenting time, and child support; and an accelerated request to reinstate parenting time and for hearing on contempt. The mother petitioned to enforce child support, spousal maintenance, and medical expenses.

The superior court confirmed that the father had properly registered the Florida Amended Final Judgment and child support orders. The parties agreed Arizona acquired UCCJEA and UIFSA jurisdiction at that time. Following the temporary orders hearing, the superior court awarded the father temporary sole legal decision-making and ordered the children live with father in California. The mother was given a weekly 90-minute phone call with the children. She was not found in contempt at this hearing. However, during the motion for reconsideration hearing, the mother did not appear. The superior court moved forward with the hearing after finding the mother did not show good cause for her absence and denied her motion. The superior court then held her in contempt for refusing to comply with the order.

The father then moved to consolidate the trial on all remaining pending matters. The superior court granted the motion. A week before the scheduled trial date, the mother moved to continue the trial for six months, claiming a medical emergency. The superior court scheduled a status conference to discuss her motion. She again failed to appear. The superior court proceeded with

the status conference, explaining it could not “simply ... cancel a hearing or change a hearing, or frankly, do anything without credible evidence of a condition.” The superior court said it would reserve time at the beginning of the trial to discuss the mother's motion to continue and any accommodations.

On the date of trial, the mother again did not appear. After waiting an hour, the superior court denied her motion to continue because she “unreasonably and unlawfully” withheld the children from father, did not appear at the status conference, did not appear at trial, and filed “unreasonable motions that appeared designed only to delay or disrupt [the] proceedings.” The superior court then dismissed her petition to enforce child support arrears, spousal maintenance, and medical expenses. The court proceeded with the trial on father's petition to modify, the sole remaining unresolved request for relief.

The superior court made extensive findings and awarded the father sole legal decision-making authority and allowed the children to relocate to California to live but prohibited father from taking the children outside the United States. The superior court awarded the mother parenting time in California after a time and “with the assistance of a therapeutic intervention or therapy.” The court said it would consider unsupervised parenting time after she completed the previously ordered “forensically informed psychological evaluation.” The father was awarded $421 per month in child support. And though the court dismissed the mother's petition, it ordered the father to pay $118,065.87 in child support arrearages.

The mother appealed, raising several issues, including jurisdiction, due process, and sufficiency of the evidence. For the first time on appeal, mother also alleged “abusive litigation” by the father. With regards to the jurisdiction issue, the mother contended that Arizona “did not have jurisdiction to enforce or modify the Florida orders” until the Florida orders had been finalized and “proceedings continu[ed] and a new hearing [was] set in Arizona.” The Court of Appeals agreed. Under the UCCJEA and UIFSA, Florida maintained jurisdiction until March 2, 2021—when jurisdiction transferred to Arizona because the father registered Florida's Amended Final Judgment. Because the Arizona superior court lacked jurisdiction prior, any substantive Arizona orders entered before that were deemed a nullity. As to the June and August 2021 orders, the Arizona superior court obtained jurisdiction on March 2, 2021, after Florida issued the Amended Final Judgment and father registered it in Arizona. At that point, Florida ceded its original jurisdiction to Arizona.

The Court of Appeals affirmed the lower court’s rulings.

***W. Virginia Dep't of Health & Hum. Res., Bureau for Child Support Enf't v. Shawn O., WL 5696112 (W. Va. Ct. App. Sept. 5, 2023) The father and mother had one child, who was born in Florida in 2000 when both parents lived there. Sometime in or around 2009, the parties separated. On October 14, 2009, the Circuit Court of Walton County, Florida entered an order directing the father to pay child support to the mother. He moved to West Virginia sometime between the entry of the child support order and May of 2022.

On May 9, 2022, the BCSE received a UIFSA petition from the State of Florida, seeking to collect the father’s child support arrearages. On May 20, 2022, the BCSE initiated a case in the

Family Court of Jefferson County for the purpose of registering the Florida child support order. As required by the UIFSA, the Circuit Clerk of Jefferson County mailed the father a Notice of Registration of Foreign Order, along with attachments, on May 23, 2022, by registered mail, return receipt requested. The father received the documents and signed the mail receipt.

On October 24, 2022, the family court dismissed the action for failure to comply with the time limit for service of process rule set forth in Rule 4(k) of the West Virginia Rules of Civil Procedure. The BCSE filed a motion for reconsideration on October 26, 2022, along with evidence documenting that the father was sent the Notice of Registration of Foreign Order on May 23, 2022, by registered mail. The motion to reconsider was denied on December 12, 2022, and the BCSE appealed.

On appeal, BCSE argued that the family court erred when it applied Rule 4(k) of the West Virginia Rules of Civil Procedure to UIFSA notice requirements. UIFSA's notice requirement states:

> "When a support order or income withholding order issued in another state or a foreign support order is registered, the clerk of the court shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order."

UIFSA directs that the family court "apply the procedural and substantive law generally applicable to similar proceedings" and that a foreign support order is "subject to the same procedures as an order issued by a tribunal of this state." The requirements in Rule 9(b) of the Rules of Practice and Procedure of Family Court are similar to the notice requirements set forth in UIFSA, which provide guidance as to what service is required in proceedings to register foreign support orders.

BCSE cited a Florida Court of Appeals case holding that registration is complete under UIFSA upon filing of the foreign order. *Dep't of Revenue v. Cuevas*, 862 So. 2d 810, 811 (Fla. 4th Dist. Ct. App. 2003). In *Cuevas*, the support enforcement agency appealed an order dismissing the registration of an out-of-state child support order. The trial court *sua sponte* dismissed the action because the support enforcement agency did not serve the respondent within the time allotted under Florida Rule of Civil Procedure 1.070 and Family Law of Procedure 12.070. The *Cuevas* court found that the trial court erred in dismissing the case because "it was the obligation of the court, not the support enforcement agency, to assure that notice was properly sent." The court found that the support enforcement agency had fulfilled its obligation by filing the order and that if the court wished that service be sent in a different manner, then it was the court's obligation to do so.

On appeal, the court found that there was no requirement in UIFSA requiring BCSE, the UIFSA support enforcement agency in West Virginia, to comply with Rule 4(k) of the West Virginia Rules of Civil Procedure. Per Rule 9(b) of the West Virginia Rule of Practice and Procedure for Family Court, it was the obligation of the circuit clerk, not BCSE, to send notice to the father. BCSE fulfilled its obligation by registering the order with the family court on May 20, 2022. The clerk similarly fulfilled its obligation when it sent the father the notice by certified mail, return

receipt requested, on May 23, 2022, well within the twenty (20) day limit. Further, the notice properly included the information required by West Virginia Code § 48-16-605(b) (2015). Accordingly, the order denying the BCSE's motion to reconsider entered December 12, 2022, was reversed and the case was remanded to the Family Court of Jefferson County.

***J.G. v. D.H., 2023 WL 6226381 (Cal. Ct. App. 6 Dist. 2023) The parties initially met via social media in 2020 or 2021. At the time, the mother lived in Los Angeles, while the father lived in Georgia and traveled around the country regularly for work as a professional athlete. In 2021, she became pregnant and gave birth to their son in December. In the Spring of 2022, the parties confirmed through DNA testing that D.H. was the child's biological father.

The mother filed a petition to determine parental relationship pursuant to the Uniform Parentage Act and checked the boxes on the judicial council form petition indicating that the court had personal jurisdiction over the father because the child was conceived in California. She sought a court order granting her sole custody and child support, as well as attorney fees. She submitted an additional declaration in which she set forth her "guideline child support [requested]" of $39,370 per month based on the parties' incomes.

The father filed a request for an order dismissing or quashing the summons and petition, or in the alternative staying and transferring the action, on the grounds that California was not the appropriate forum. In his supporting points and authorities, the father argued that the court lacked personal jurisdiction over him because he was a resident of Georgia and did not have sufficient contacts with California. According to him, the single instance of engaging in sexual intercourse within the state is insufficient to confer personal jurisdiction over him. He also argued that the trial court did not have subject-matter jurisdiction over child custody because California is not the child's "home state" as defined in the UCCJEA. Instead, he contended, Texas was the child's home state because the child had lived there from birth, with his mother and grandmother, until the mother filed her petition.

The mother argued that the trial court had jurisdiction to establish the parent-child relationship and issue a support order. She alleged that California was not the child's home state for purposes of the UCCJEA, but argued Texas was not the home state either because she and the child had permanently moved from Texas to California. Accordingly, she contended, because no state was the home state, California could exercise jurisdiction under the UCCJEA based on the "significant connection" she and the child had with the state. There was substantial evidence of such a connection because she was born in California, had lived in the state most of her life, had a California driver's license, filed her income taxes there, and was registered to vote in the state.

The court held that it did not have the requisite jurisdiction to make the orders requested by the mother for two reasons. First, it did not have personal jurisdiction over the father "for purposes of financial orders including child support and professional fees and costs." Specifically, the court noted that, although sections 7620 and 5700.201 "permit a California court to assert personal jurisdiction over a non-resident based upon sexual intercourse in California that results in the conception of a child," the court's exercise of personal jurisdiction is still subject to constitutional limitations. According to the court, the father did not have sufficient minimum contacts with California to establish general jurisdiction. In addition, it would be unreasonable

and would offend “traditional notions of fair play and substantial justice” for the court to assert personal jurisdiction over him based on the singular act of conceiving the child in California. Second, the court stated it did not have subject-matter jurisdiction to issue child custody orders. It explained that, because the child was born in Texas and had been living there continuously since birth—including on April 29, 2022, the commencement of the lawsuit—California was not the child's home state under the UCCJEA. The trial court therefore granted the father’s request and ordered the mother’s petition “quashed and dismissed.” The mother appealed.

On appeal, the court analyzed the UPA, UCCJEA and UIFSA. UIFSA Section 5700.204 sets forth conditions restricting a court's authority to exercise child support subject-matter jurisdiction where there are simultaneous proceedings in California and another state. Subdivision (a) of that section provides that, where the California petition was filed *after* a comparable pleading was filed in another state or country, the California court may exercise jurisdiction *only if* (1) the California petition was filed before the expiration of time to challenge the exercise of jurisdiction in the other state or country; (2) the contesting party timely challenged the exercise of jurisdiction there; and, (3) if relevant, California is the child's home state.

Subdivision (b) of section 5700.204 provides that, where the California petition is filed *before* a comparable pleading is filed in another state or country, the California court may not exercise jurisdiction where (1) the comparable pleading in the other state or country was filed before the expiration of the time to challenge the exercise of jurisdiction in California; (2) the contesting party timely challenges the exercise of jurisdiction here; and (3) if relevant, the other state or country is the child's home state.

Thus, the UIFSA's limitation on the exercise of jurisdiction over child support orders only comes into play when a comparable pleading has actually been filed in another state that is the child's home state within the applicable time period. The UIFSA also sets forth its own bases for a court's exercise of personal jurisdiction over nonresidents subject to child support orders. Section 5700.201 provides, among other things, that “[i]n a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if ... [¶] the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.”

Therefore, the Court of Appeal held that the trial court had personal jurisdiction over the father for purposes of the UPA and UIFSA and that subjecting the father to personal jurisdiction satisfied constitutional due process requirements because he had sufficient minimum contacts with California.

In its analysis, the Court of Appeal explained that, here**,** it was undisputed that the father engaged in sexual intercourse in California and that the child was conceived by that act. The plain language of the relevant statutes authorizes the exercise of personal jurisdiction over the father subject to constitutional due process limitations. Beginning with the first of these requirements, the Court concluded that the father purposefully and voluntarily directed his activities toward California when he intentionally traveled to the state on business and engaged in sexual intercourse with the mother. Based on those undisputed activities alone, he should have

expected, by virtue of the benefits and protections he received from California's laws related to those acts, and the potential liabilities stemming therefrom, to be subject to a California court's jurisdiction.
The father argued that there was no purposeful availment because, although the mother. was a California resident when the parties met in California, “it was not established” that he knew she lived in California. In addition, he argued, he could not have known that, had they conceived a child, she would raise it in California, and no government assistance was provided by California to her for support of the child. The Court was unpersuaded. Here, it was the intentional and knowing act of sexual intercourse within the state that constituted the purposeful availment. The intentionality of that act was not predicated in any way on whether he knew she was a California resident or lived in the state, whether the child would be raised in California, or whether government assistance had already been provided. As the United States Supreme Court has explained, “the foreseeability that is critical to due process analysis ... is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.”

The second requirement to establish sufficient minimum contacts is that the controversy be related to, or have arisen out of, the defendant's contacts with the forum state. The father argued that although conception occurred in California, that act constitutes irrelevant past contacts—by contrast, he contended, because the child had not yet stepped foot in California when the mother commenced her action, there were insufficient contacts at the time of the proceeding. The Court disagreed and held that the general rule is that the relevant period during which minimum contacts must have existed is when the cause of action arose, rather than when the complaint was filed or served and that the controversy here arose from the father’s contacts with California.

Where, as here, a plaintiff carries her initial burden, it then shifts to the defendant to demonstrate that the court's exercise of personal jurisdiction would be unfair or unreasonable. The Court held that the father failed to carry his burden of demonstrating that the exercise of personal jurisdiction would be unfair or unreasonable. The burden on the father would be extremely minimal. By his own admission, he traveled to California for work multiple times per year. Second, California plainly has an interest in adjudicating the dispute, where “the birth of a child imposes a substantial burden both upon the mother and where, as here, the mother is impecunious, upon the state.” The trial court found that the mother owned a bank account, was registered to vote, filed her income tax returns, and had a driver's license in the state of California. In addition, she submitted evidence showing that she was unemployed and had reported less than $22,000 in her 2020 California tax returns. Third, her interest in obtaining convenient and effective relief in California courts is self-evident.

The trial court held that it did not have subject-matter jurisdiction over the child for purposes of making child custody orders under the UCCJEA. It did not address whether it had subject-matter jurisdiction over the mother’s request for a child support order. The Court of Appeal agreed that the trial court properly determined that it did not have jurisdiction to issue a child custody order under the UCCJEA.

The trial court, however, did not address the request for an order of child support or otherwise opine as to whether it had subject-matter jurisdiction to issue such an order. The father did not

argue in his request for order that the trial court lacked subject-matter jurisdiction to issue a child support order pursuant to the UIFSA. Although the father did not raise the issue in his request for order and the trial court did not reach it, the Court of Appeal elected to decide whether the UIFSA precluded the trial court from exercising subject-matter jurisdiction over child support, rather than remanding for the trial court to decide.

As discussed earlier in the opinion, the Court reiterated that section 5700.204, subdivision (a) "*allows* a California court to proceed even though a petition or comparable pleading already had been filed in another state if the California proceeding is filed within the time to respond in the other state and the contesting party files a timely challenge to the exercise of jurisdiction by that state," while "[s]ubdivision (b) *prohibits* California courts from exercising 'jurisdiction to establish a support order' if a comparable pleading is filed before a 'petition or comparable pleading' in another state if the pleading in the other state is filed within the time to respond to the California pleading and the contesting party challenges jurisdiction in this state," and, if relevant, the other state is the child's home state.

Therefore, the Court concluded that the UIFSA did not preclude the trial court from exercising subject-matter jurisdiction over child support. Subdivision (a) of section 5700.204 was not applicable here because no petition or comparable pleading had been filed in another state when the mother filed her petition in this action. The record shows that the father filed an action in Georgia in June 2022, roughly two months *after* the mother filed the petition in this case. Nor does the prohibition in subdivision (b) of section 5700.204 apply here because no pleading was filed in another state that is the child's home state within the time to respond to the California pleading. While the record shows that a pleading was filed in Georgia within that time period, Georgia was not the child's home state. In briefing on appeal, both parties claim that the father filed a pleading in a Texas court on September 14, 2022. However, even if that were the case and there was evidence of such a pleading in the record, any such pleading filed on that date would not have been filed within the time to file a responsive pleading in this action, and the prohibition in section 5700.204, subdivision (b) would not apply.

In sum, the UIFSA did not preclude the trial court from exercising subject-matter jurisdiction over child support and the trial court's order was reversed and remanded with directions to enter a new order and for further proceedings consistent with the opinion of the Court of Appeal.

Cusick v. Est. of Longin by & through Longin, 893 S.E.2d 224 (N.C. Ct. App. 2023) In 1991, the parties (husband deceased) married in the state of Washington. In 2018, they divorced in the state of Colorado. The decree incorporated two Memorandums of Understanding (MOU) documenting the terms of the Separation Agreement reached by the parties through mediation. The first MOU included a specific list of marital assets and did not refer to the income of either spouse. Under that MOU, the husband assumed an obligation to make monthly payments of $2,000 to the wife for spousal maintenance over a period of sixty months.

In August 2018, the parties amended the MOU and the Separation Agreement that extended the payment obligation by twenty-four months. The Separation Agreement specifically stated: "The payment of maintenance shall be deemed to be contractual in nature and shall not be

modified for any reason. The Court shall be divested of all jurisdiction to modify maintenance after the entry of the permanent orders."

On 9 March 2021, the husband died intestate in North Carolina. Before his passing, he made thirty-two monthly payments to the wife, totaling $64,000, in compliance with the Separation Agreement. At the time of his passing, fifty-two monthly payments remained, with a balance of $104,000.

In September 2021, the wife made a claim in the amount of $104,000 against his estate by hand-delivering the Written Statement of Claim to the attorney for the estate. Her claim was rejected by the attorney and she then timely sued for $104,000. Thereafter, defendant-estate moved for a dismissal, alleging lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Defendant-estate maintained that the wife's failure to register the Colorado support order under the UIFSA resulted in the trial court lacking subject matter jurisdiction. They also contended that, under Colorado law, the estate no longer had an obligation to pay the wife's claim for $104,000 after the husband's death. The court agreed and the wife appealed.

On appeal, the wife contended that since the Separation Agreement contained a non-modification clause, she was still entitled to $104,000 in maintenance payments, even after the husband's death. Defendant-estate disagreed, asserting that, under Colorado law, she was not entitled to posthumous maintenance. Moreover, defendant-estate argued that her claim should be dismissed for lack of subject matter jurisdiction.

With regards to the registration and subject matter jurisdiction argument, the Court of Appeals explained that UIFSA was introduced to establish the principle of continuing, exclusive jurisdiction and the one-order system. The goal of this provision makes only one support order effective at any one time. The circumstances in this case were such that the wife was suing defendant-estate for a breach of contract, seeking a remedy of a sum certain in response to the denial of a claim. The concerns of multiple orders, confusion regarding modification, and necessity of enforcement by contempt anticipated by UIFSA were not present and the court held that the wife was not required under the UIFSA to first register a foreign marital dissolution decree prior to filing suit against the estate.

(Aside from the UIFSA issues, the Court of Appeals did ultimately determine that the obligation to pay ended when the husband passed away.)

International Cases

Dep't of Child. & Fam. Servs. in Int. of Lannelongue-Navarro v. Lannelongue, 358 So. 3d 899 (La. App. 5 Cir. 2023). The parties married in January 2004 in Nevada but had physically separated by the time of the birth of their child, born in September 2004. In September 2016, the mother filed a custody and support proceeding against the father in Spain, where she resided and was domiciled. In 2017, she was awarded custody of the child and child support to be paid by the father in the amount of 1,000 euros per month. The Spanish Order was made final on February 23, 2018, as no appeal had been filed within the time period allowed by law.

In April 2019, the mother began the process of registering the Spanish Order in the State of Louisiana, the father's state of residence and domicile. The father filed a Notice of Objection to Registration of Foreign Order, contesting the registration of the Spanish Order on several grounds. He argued that he first learned of the Spanish Order in October 2018, when contacted by Orleans Parish's Department of Children and Family Services, and he was not fluent in Spanish. Further, he questioned the child's paternity and argued that he was denied due process. He contended that he did not receive notice and was not given an opportunity to be heard; and he was not served with a petition or notice of the proceedings. He claimed the Spanish Order was obtained by fraud, and that the mother and her family had his contact information. He also alleged that counsel for the mother contacted him earlier threatening legal action if he did not contact her to resolve the legal situation regarding the minor child.

A hearing on the matter of registration of the support order was held and the mother elected to institute a child support obligation based on the Louisiana guidelines. In response, the Department of Children and Family Services requested that the parties undergo genetic testing and filed a Rule for Child Support on August 2, 2019, in case the hearing officer denied the mother's petition to register the Spanish Order.

At the next hearing, the hearing officer acknowledged that DNA testing confirmed that the father was the child's biological father, found that he was legally obligated to support his minor child, and recommended that a temporary support order be issued in the amount of $500.00 per month plus 5% court costs, starting September 2019.

At the next hearing, the hearing officer ruled that the Spanish Order could not be "registered for enforcement" in Louisiana because the father never was served with the petition in accordance with "minimum standards of due process and was not given the opportunity to be heard in Spain". The father argued that a Louisiana court could not exercise jurisdiction in the matter because 1) the State's [Rule] for Child Support was filed after the period allowed for him to challenge Spain's jurisdiction over the matter; 2) he could not challenge Spain's jurisdiction because he had no knowledge of the child support proceedings that took place there; and 3) Louisiana was not the minor child's home state.

The court upheld the hearing officer's recommendation as to exercise subject matter jurisdiction via Louisiana child support order proceedings, the mother agreed not to seek to enforce the Spanish Order, and the father agreed to be subject to the enforcement of the Louisiana support order. Also, pursuant to the State's Rule for Child Support, the juvenile court issued a temporary child support order requiring the father to pay $1,127.70 per month, retroactive to August 2, 2020.

On appeal, the father again challenged the court's subject matter jurisdiction, challenging the State's ability to establish an order of support in Louisiana, despite the existence of a judgment of support having already been rendered in another jurisdiction, Spain, whose validity has not been challenged in that jurisdiction. The State argued "Louisiana, as a political subdivision of the United States, has an international obligation under the Hague Convention on the International Recovery of Child Support [(hereinafter referred to as "the Convention")] to afford the mother an opportunity to have her petition for support decided in Louisiana, as the Spanish

Order has been declared to be unenforceable in Louisiana." The State also contended that the Convention, to which both the United States and Spain are signatories, also provides specific guidance. The Convention requires that when a judgment for child support issued in a foreign state is declared unenforceable by another state because the respondent did not have proper notice, the petitioner has the right to apply for maintenance in the requesting State and the requesting State has an obligation to establish a decision on such application.

The mother, as Co-Appellee, agreed, contending that the father had their marriage annulled in Nevada, believing that the annulment would also revoke the child's legitimacy. Until this proceeding, she argued that he had never contributed his share of the parental support obligations owed to his son. Further, she argues the UIFSA is clear and unambiguous and that there had been no support order issued by Spain or any other state or foreign country that was entitled to recognition in Louisiana, as the father himself successfully argued. Because Louisiana had personal jurisdiction over the father, and the mother resided outside of Louisiana in Spain, the Juvenile Court had jurisdiction to issue the child support order. She also argued that the Spanish Order could not be enforced against the father in Spain because he was domiciled in Louisiana and could not be compelled to go to Spain to comply with his Spanish obligations. In the absence of recognition and enforcement in Louisiana, the Spanish Order would be effectively null and void.

The Court of Appeal found that that the juvenile court correctly applied the UIFSA and that the UIFSA authorizes a tribunal of the state to exercise its jurisdiction to establish a support order after proceedings have begun in another state or foreign country if: 1) the petition is filed in Louisiana during the time period the other jurisdiction provides to file a responsive pleading challenging the exercise of its jurisdiction; 2) the contesting party has timely challenged the exercise of jurisdiction in the other state or foreign country; and 3) Louisiana is the child's home state (if relevant). Conversely, the article prohibits a state tribunal from exercising its authority if a petition or comparable pleading is filed in the other state or foreign country within the time period Louisiana allows for filing a responsive pleading challenging Louisiana's exercise of jurisdiction; 2) the contesting party timely challenges Louisiana's jurisdiction, and 3) the other state or foreign country is the child's home state. The last hearing in the proceeding that led to the Spanish Order occurred in 2017. The father's right to appeal the judgment in that proceeding expired in February 2018. The proceedings to establish a support order in Louisiana began in July 2019.

On October 29, 2019, the hearing officer ruled that the Spanish Order could not be "registered for enforcement" in Louisiana because the father never was served with the petition in accordance with "minimum standards of due process and was not given the opportunity to be heard in Spain." In July 2020, the mother a non-resident of Louisiana, applied for a support order in this state. The State, through the District Attorney's office, filed a petition on her son's behalf and requested genetic testing, which later identified the father as the father of her son. Because there was no support order entitled to recognition in this Louisiana, and the mother was not a resident of Louisiana, the juvenile court was authorized to issue a support order.

The decision of the lower court was affirmed.

***Dep't of Revenue Child Support Enf't Div. v. Michalko, 102 Mass. App. Ct. 1109 (2023) The father appealed from a judgment of the Probate and Family Court enforcing a child support order issued by a court in the Czech Republic and determining arrearages.

The father asserted two grounds under the UIFSA to contest the enforcement of the child support order. First, he argued that "recognition and enforcement of the order is manifestly incompatible with public policy" because he was fraudulently deprived of child support as a child by the government of Czechoslovakia. G. L. c. 209D, § 7-708 (b) (1). The Appeals Court held that "[t]he defendant's desire to visit upon his son the same injustice that was visited upon him as a child holds no purchase in the public policy of Massachusetts."

Second, the father argued that "the order was obtained by fraud in connection with a matter of procedure." G. L. c. 209D, § 7-708 (b) (4). To the extent he argued that the current order was obtained by fraud because he was fraudulently denied child support as a child, this argument was found to be without merit for the reasons already stated. He also argued that because his attorney did not notify him of the order until four months after it entered, he was denied an opportunity to appeal the order. Nothing in the record presented indicated that the father raised this argument in the probate court and so he waived the argument. The judge correctly concluded that, under the relevant provisions of the UIFSA, the father failed to establish any defenses to contest the enforcement of the Czech child support order.

***Shapira v. Lackenbacher, 2023 WL 2011594 (Cal. Ct. App. Feb. 15, 2023) In March 2021, a Notice of Registration of Out-Of-State Support Order under the UIFSA was filed with the court on behalf of the mother. The Registration Notice attached a child support order from Colombia. The Notice provided that if the father wished to contest the registration or enforcement of the Notice, he was required to file papers within 20 days. He did not file such challenge. Approximately six months later, he filed a motion for relief from default under the UIFSA and the Full Faith and Credit for Child Support Orders Act (FFCCSOA). After a hearing, on December 13, 2021, the court denied his motion.

The father appealed.

The record showed that the Registration Notice was served on March 16, 2021. His objection to the Notice was due on or before April 5, 2021. According to his motion, he submitted a letter to the court requesting copies of the files—which he contended substantially complied with the requirement of a formal written objection to the Notice—on April 13, 2021. Aside from his claim of substantial compliance, the letter was eight days beyond the deadline for the objection. Further, the court clerk rejected the filing of the father's letter. There is nothing in the record indicating that the father took further action, either on his letter that was rejected or in objecting to the Registration Notice, until he filed the motion on September 20, 2021. He provided no explanation for waiting more than five months after the rejection of his letter to take any action relative to the Notice. The Court of Appeal affirmed the denial of the father's motion, as he failed to comply with the requirements of registration under the UIFSA.

***Norat v. Cruz Hernandez, 2023 WL 3357373 (P.R. Cir. Apr. 27, 2023) The parties resided in Puerto Rico with their daughter until the parties separated and the father moved to Florida. The

mother, and the daughter when she reached the age of majority, filed motions for contempt in Puerto Rico against the father for failure to pay support, including requests for income withholding orders and incarceration. The Puerto Rico court determined that under the UIFSA, Puerto Rico could issue an income withholding order under the concept of long arm jurisdiction to an employer in Florida. However, long arm jurisdiction under UIFSA does not empower a Puerto Rico court to issue an arrest warrant against an NCP who does not reside in Puerto Rico.

***In re A.H., 2023 Il. App. (1st) 190572 (4th Div., 2023). The parties began a relationship in Thailand, while the father was married to someone else, in 2001. The mother was 23 and the father was 53. Over the course of several years, they would meet when the father visited Thailand. In 2008, the mother gave birth in Thailand to the triplets via in vitro fertilization using the father's sperm and her eggs. The father financially supported her and the triplets until September 2009. The mother filed suit against the father in Thailand. In December 2010, the Thai court adjudicated him to be the father of the triplets based on DNA test results and ordered him to pay $500 per month for the support of each of the triplets. This judgment was affirmed by Thailand's intermediate appellate and supreme courts. The father, however, failed to pay any child support.

The mother, living in the UK with the children and her new husband, filed a petition in Illinois, where the father lived, seeking enforcement and modification of the child support order. The Circuit Court, Cook County, Illinois, modified the order and ordered the father to pay over $76,000 in past due child support under the Thai judgment, $4.5 million into trusts for prospective modified child support, $2 million in retroactive modified child support, over $2 million in attorney fees and costs, and $50,000 in sanctions.

On appeal, the father argued that the circuit court (1) lacked statutory authority to modify the Thai judgment, (2) erred by applying pre-July 1, 2017, Illinois child support laws, (3) abused its discretion by barring the testimony of respondent's immigration expert, (4) abused its discretion by modifying the child support award in the Thai judgment and making the modified child support retroactive with interest and creating child support trusts, (5) abused its discretion by adopting the terms of the trust agreements, (6) failed to give respondent credit for child support payments and overfunded the child support trusts, (7) erred in awarding attorney fees and costs, and (8) abused its discretion by ordering him to pay $50,000 in sanctions.

With regards to the father's argument that the circuit court was without authority to modify the child support award of the Thai judgment, the Appellate Court opined that "traditional common-law principles of comity allowed Illinois courts to enforce the terms of a child support order entered in the courts of a foreign nation, absent some showing of fraud in the procurement of the judgment or that recognition of the judgment would do violence to some strong public policy of this state." The Appellate Court went on to say that "[When] a modifiable child support order of a foreign jurisdiction is enrolled in Illinois under principles of comity, an Illinois court has jurisdiction to modify the support order, just as a court in a foreign jurisdiction could do. In other words, once a foreign judgment is properly enrolled as a domestic support judgment, an Illinois court may entertain and decide an application for enforcement or modification of the support award.

The father argued that the circuit court was prohibited by the UIFSA from modifying the Thailand child support judgment because under the UIFSA the circuit court may assume jurisdiction to modify a foreign country's child support order only if the foreign country lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws. He argued that the mother failed to meet her burden to establish the requisite conditions because she never asked the Thai court to modify its child support judgment.

Additionaly, at oral argument, the father contended that the circuit court lacked authority under the UIFSA to modify the Thailand support judgment because it provides that the circuit court "shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction."

The Appellate Court rejected that the father's first argument (UIFSA prohibited the circuit court from modifying the Thailand child support order because the mother failed to show that Thailand refused to exercise jurisdiction) because Thailand is not a "foreign country" as that term is defined by the UIFSA. UIFSA defines "foreign country" as a country other than the United States that authorizes the issuance of support orders and (1) has been declared under the law of the United States to be a foreign reciprocating country, (2) has established a reciprocal arrangement for child support with this state and (3) has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under the UIFSA. Thailand has not been declared a foreign reciprocating country under federal law and has not established a reciprocal arrangement for child support with Illinois.

Although respondent argued on appeal that Thailand meets the definition of a foreign country because it has established laws and procedures for the issuance and enforcement of support orders that are substantially similar to those under the UIFSA, he argued the opposite position before the circuit court. Specifically, respondent argued below that the fact that the United States has not declared Thailand to be a foreign reciprocating country was strong evidence against a finding that its laws and procedures were substantially similar to the UIFSA and other courts have held that the mere fact that a country may recognize foreign judgments generally was insufficient to establish substantial similarity under the UIFSA. Having argued below that Thailand is not a foreign country under the UIFSA, the father was then precluded from taking the opposite position on appeal.

Additionally, his argument was contrary to his own evidence. He submitted to the circuit court the April 2, 2013, affidavit of a licensed attorney in Thailand with over 13 years of experience specializing in international family law matters. She stated that Thailand's law did not "contain any laws or procedures with respect to the issuance of foreign child support orders" or "any laws or procedures with respect to the recognition or enforcement of foreign child support orders." Additionally, Thai law did not "make any direct provision for the enforcement of foreign child support judgments in the Thai courts."

The Appellate Court therefore rejected the father's argument that Thailand meets the definition of a foreign country under the UIFSA.

The father also argued that section 105(a)(3), which provides that Illinois courts shall apply articles 1 through 6 of the UIFSA to a support proceeding involving an obligee or child residing in a foreign country, applied here because the mother and the triplets were the obligees of the Thai judgment and they resided in the United Kingdom. However, section 105(a)(3) was found to not apply in this case because Thailand is not a "foreign country" as defined in the UIFSA, and as a result, its judgment was not a child-support order under section 102(2).

The father then argued for the application of section 603(c), which prohibits modification of child support orders. However, section 603(c) is limited to registered support orders. Because Thailand is not a foreign country under the UIFSA, the Thai judgment was not a registered "support order" as defined in section 102(28). For the same reason, the Thai judgment cannot be a "foreign support order" under section 102(6) because it was not issued by a "foreign tribunal" as defined in the UIFSA.

The UIFSA provisions upon which the father's arguments were based, did not deprive the circuit court of authority to modify the Thai judgment and the Appellate Court concluded that the circuit court was authorized under the principles of comity and the Marriage Act and Parentage Act to consider and adjudicate the petition to modify the Thai judgment and that the UIFSA did not preclude the court from so acting.

Note: Another ground for recognizing and enforcing the Thai order was FCA 580-105 (b) "A tribunal of this state that is requested to recognize and enforce a support order <u>on the basis of comity</u> may apply the procedural and substantive provisions of parts one through six of this article." The court applies the principle of comity to determine whether the order is enforceable, then applies UIFSA rules to govern the process.