



Intergovernmental Scenarios for Attorneys

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JURISDICTION TO ESTABLISH A SUPPORT ORDER



Scenario 1

Facts:

- 2004 - Parents married in NV and separate before son born in Spain in Sept.
- 2016 - Mom brings support and custody proceeding in Spain.
- 2018 - Spain issued final order
- 2019 - Mom registers Spanish order for enf in LA where dad lives.
- Dad denies paternity and objects to registration alleging denial of due process citing lack of notice and opportunity to participate in hearing.
- At initial registration hearing, LA child support agency orders genetic testing and files petition to establish a LA support order in case foreign order found not valid.
- Trial court issues temporary support order based on test results.
- Court later finds Spanish order is void for lack of due process and establishes a LA support order.
- Dad appeals.



What would you do?

Options:

- (a) LA trial court lacked jurisdiction to establish a support order because of UIFSA's provision regarding simultaneous proceedings. There was a Spanish order, its validity has not been challenged in Spain, and Spain was child's home state.
- (b) LA trial court had jurisdiction to establish a temporary support order prior to the registration hearing and jurisdiction to establish a "final" support order once the registered Convention support order was declared unenforceable under Article 7 of UIFSA based on lack of proper notice.
- (c) LA trial court had jurisdiction to establish a support order once the registered Convention support order was declared unenforceable but lacked jurisdiction under UIFSA to establish a temporary support order prior to the decision about unenforceability being made.

Vote:

(a), (b), or (c)



The court decided...

(b)

Citing UIFSA Section 708 Recognition and Enforcement of Registered Convention Support Order and Section 401 Establishment of Support Order

State v. Lannelongue, No. 22-CA-220 (La. App. 2023)



LONG-ARM JURISDICTION



Scenario 2

Facts:

- 2017 - AZ divorce order
- Mom now lives in ND, Dad lives in AL.
- May 10, 2022 - Dad seeks modification of support in AL. Alleges personal jurisdiction over Mom because she had been arrested in AL
- May 31, 2022 - Mom served in ND
- Mom files limited appearance, arguing lack of personal jurisdiction over her.



What would you do?

Options:

- (a) AL trial court should apply Section 201 of UIFSA and find long arm jurisdiction over mom because of arrest in AL.
- (b) AL trial court should apply Section 201 and find a lack of personal jurisdiction over mom because the arrest does not constitute sufficient minimum contacts with AL to satisfy due process.
- (c) AL trial court cannot apply Section 201 to acquire personal jurisdiction over mom to modify AZ support order unless AL has modification jurisdiction under Section 611 or 615.

Vote: (a), (b), or (c)



The court decided...

(c)

Trial court cannot use UIFSA's long arm provision in Section 201 to acquire personal jurisdiction in modification action unless modification jurisdiction under UIFSA met. Here it wasn't. Dad cannot register another state's order in his own state for modification.

Ex Parte Sperry: In re: Patrick Quinlivan v. Jessica Sperry, No. C -2022-1036 (Ala. Civ. App. 2022)



CHILD CUSTODY AND CHILD SUPPORT JURISDICTION



Scenario 3

Facts:

- 2014 - Mom and Dad meet in TX while she was in process of getting a divorce.
- 2016 – Mom becomes pregnant and moves in with Dad, along with children from her marriage.
- 2016 (still) – Mom and children move in with her parents in HI and child born in HI.
- 2016 (still) - One month prior to child's birth, Dad files a paternity action in TX. Genetic testing confirms paternity.
- 2016 (still) - A month after child's birth, Mom files paternity action in HI seeking custody and support. Dad is personally served in TX.
- 2017 - Dad files a special appearance in the HI action arguing that Mom's petition should be dismissed because the Family Court lacked both personal and subject matter jurisdiction.



Scenario 3

Facts (cont'd):

- At hearing for temporary custody, HI trial court issued an order stating that HI had jurisdiction because HI was child's home state and it could enter temporary orders and adjudicate the issues in this matter including child custody, visitation, and child support. Temporary order grants Mom custody and orders Dad to pay temporary support.
- At trial, Dad again raised issue of lack of jurisdiction. The Family Court noted the findings in the temporary order about jurisdiction and issued an order addressing custody and ordering Dad to pay support.
- Dad appeals, arguing trial court erred in its order because it lacked subject matter jurisdiction and lacked personal jurisdiction over Dad to determine parentage or order support.



What would you do?

Options:

- (a) HI court had subject matter jurisdiction over child custody issues and therefore also had jurisdiction to address the related question of child support.
- (b) HI had personal jurisdiction over Dad to establish parentage and support under UIFSA's long-arm provision in Section 201.
- (c) HI lacked personal jurisdiction over Dad to establish parentage and support under UIFSA's long-arm provision in Section 201.

Vote: (a), (b), or (c)



The court decided...

(c)

- The Family Court had subject matter jurisdiction to make a child custody determination because HI was the child's home state when the proceeding was commenced. However, jurisdiction to address custody (status jurisdiction) is not the same as jurisdiction to address parentage and support (personal jurisdiction).
- The Family Court lacked personal jurisdiction over Dad to determine parentage or to order him to pay child support.
 - His request that Mom leave does not satisfy the "acts and directives" basis.
 - Father also had no connection to HI prior to Mom's unilateral decision to move to Hawai'i to receive support from her family
 - Mom's receipt of PA in HI is not a basis of jurisdiction over Dad



REGISTRATION OF A FOREIGN SUPPORT ORDER



Scenario 4

Facts:

- Mom and alleged Dad had a romantic relationship in NC.
- In 2000, the parties had two children who were born in Switzerland.
- Mom brought an action in the Canton of Geneva to establish paternity and child support. Alleged dad did not appear. The Swiss court entered judgment against dad on both counts.
- The Swiss Central Authority applied to register and enforce the Swiss support order in NC.
- Defendant filed a Request for Hearing to, among other things, vacate the registration of the foreign support order.



Scenario 4.1

Facts (cont'd):

- As evidence of service, Mom had submitted an unnotarized affidavit.
- After a hearing, the trial court vacated the registration of the foreign support order, finding that the court file lacked any evidence that defendant had been provided with proper notice of the Swiss proceedings. The trial court ruled the unnotarized affidavit was inadmissible because under NC case law, an essential element of an affidavit is an oath administered by an officer authorized by law to administer it.



What would you do?

Mom filed a motion for relief under Rule 60b, arguing the court should have accepted the unnotarized affidavit.

Options:

- (a) NC case law controls and the affidavit was inadmissible as proof because it was not notarized.
- (b) By enacting UIFSA, the legislature created an exception for interjurisdictional cases and the trial court should have admitted the affidavit signed under penalty of perjury.

Vote:

(a) or (b)



The Court of Appeals Decided...

The Court of Appeals said trial court did not err in denying Mom's motion, but the Supreme Court reversed. So the ultimate answer is (b).

In recognition of the hardship that may result from the traditional notary requirement, the General Assembly created special evidentiary rules provided in UIFSA to permit affidavits in some circumstances to be admitted into evidence without notary acknowledgement if they were sworn to under penalty of perjury. Here, for an international party in a child support action, the party's signature on the affidavit under penalty of perjury suffices. No notarization is required under UIFSA section 315(b).

NC Supreme Ct remanded the case to the trial court for reconsideration of the Rule 60b motion.

Gyger v. Clement, 846 SE 2d 496 (2020), reversing Gyger v. Clement, 823 SE 2d 400 (NC App 2018)



Scenario 4.2

Facts:

- On remand, the trial court admitted mom's affidavit submitted under penalty of perjury.
- For the second time, the court denied Mom's Rule 60b motion, concluding that the Swiss tribunal lacked personal jurisdiction over Dad and that the registration of the Swiss order should be vacated.
- Mom had argued
 - Children were born and live in Switzerland.
 - Dad visited children for one week in 2001 and for two weeks in 2002, 2003, 2004 and 2005. Dad stayed in the home with mom and children during his visits.
 - Dad voluntarily sent money to Mom for the support of the minor children in varying amounts, usually between \$500 and \$1,000 a month prior to Swiss order.
 - Dad received a summons from the Swiss court that was sent to him in NC by certified mail, return receipt requested, and he signed for the summons.



Scenario 4.2 (cont'd)

Facts:

- Dad had argued:
 - Dad is not a citizen of Switzerland and has never lived there.
 - Dad has never been employed in Switzerland and has no assets there.
 - Dad has never received mail in Switzerland.
 - Dad was never personally served with the Summons and Complaint within Switzerland.
 - Dad never filed a responsive document with the Swiss Court.
 - Dad never appeared before the Swiss Court.



What would you do?

Mom appeals the denial of her motion.

Options:

- (a) Uphold the denial. The trial court's findings of fact adequately supported its determination that the foreign tribunal lacked personal jurisdiction over Dad, and it did not otherwise abuse its discretion in ruling on the motion.
- (b) Reverse the denial. The trial court's findings do not support a determination that the foreign tribunal lacked personal jurisdiction over dad. The dad's yearly visits to Switzerland to see the children and his financial support to the children are consistent with the U.S. and NC constitutions for the exercise of personal jurisdiction.

Vote: (a) or (b)



The court decided...

(a)

The trial court's findings of fact contain ample support on the Record from which the trial court could correctly conclude the Swiss tribunal lacked personal jurisdiction over Father. It was Mom's voluntary decision to return to Switzerland. Dad did not purposefully avail himself of the benefits and protections of the laws of Switzerland. The fact that the defendant visited the children approximately six times over five years is also insufficient to establish in personam jurisdiction over him.

The Court of Appeals cites the U.S. Supreme Court decision in *Kulko* as well as a NC case in support.



MODIFICATION OF SPOUSAL SUPPORT ORDER



Scenario 5

Facts:

- Parties, who are US citizens, were married in PA but later moved to the UK.
- In 2009 UK issued a divorce decree, incorporating a consent separation agreement addressing spousal and child support.
- In 2010 both parties moved back to U.S. Mom lives in CT. Dad lives in NY.
- In 2010 Mom filed UK divorce decree in CT under principles of comity. In 2011 she asked court to enforce the UK order and approve two QDROs. By parties agreement, court granted motions.
- In 2011 Mom sought modification of alimony in CT based on increase in Dad's income. Dad also sought modification of alimony on basis of mom's cohabitation with another.
- The trial court denied both parties' motions, in part, on their failure to provide the court with the applicable substantive law of the controlling jurisdiction.
- Both parties filed new motions. Mom filed a motion to dismiss dad's motion to modify alimony, arguing for the first time that the court lacked subject matter jurisdiction to modify the judgment.



What would you do?

Does trial court have subject matter jurisdiction to modify spousal support terms in UK order?

Options:

- (a) Yes. Once the UK order was recognized under comity, CT acquired jurisdiction to enforce and modify its terms including spousal support.
- (b) Yes, if the UK order that was recognized by CT provides that either party may provide for an upward or downward variation.
- (c) It depends. UIFSA provides that a U.S. tribunal may not modify a spousal-support order issued by a tribunal of a foreign country having continuing, exclusive jurisdiction over that order under the law of that foreign country.
- (d) No. UIFSA provides that a U.S. tribunal may not modify a spousal-support order as long as a party continues to reside in the issuing state or foreign country.
- (e) No. A U.S. tribunal may not modify a spousal support order issued by a foreign country.

Vote: (a), (b), (c), (d), or (e)



The court decided...

(c)

The Court of Appeals ruled the trial court erred in concluding it lacked subject matter jurisdiction to modify alimony terms in the UK order because it erred in interpreting UK law.

UIFSA Section 211(b) provides:

A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

The trial court had relied on language in an Explanatory Note to REMO which states in essence that the US cannot modify a UK order and the UK cannot modify a US order. The appellate court focused on the text of REMO, rather than the Explanatory Report. It provides that the jurisdiction of a UK court to modify a maintenance order “shall be exercisable” notwithstanding that the proceedings for the modification are brought by or against a person residing in the US.



The court decided...

“Although it appears from these provisions that the United Kingdom maintains continuing jurisdiction to modify a spousal support order initiated in the United Kingdom, we have not found any language in the REMO that demonstrates that the United Kingdom keeps exclusive, rather than concurrent, jurisdiction to modify the spousal support order in this case. To import language into the REMO that is not present would, in our view, not only be legally incorrect, but it would work an unreasonable burden on the parties in this case—two citizens of the United States who have returned home to the United States with no indication that they intend to return to the United Kingdom.”

Olsen v. Olsen, 279 A. 3d 230 (Conn. App. 2022).



MODIFICATION OF CHILD SUPPORT



Scenario 6

Facts:

- Parties divorced in ME. Order required Dad to pay child support.
- Mom and children later moved to MD. Dad remained in ME.
- 10 years after divorce when oldest child turned 18, Mom registered the ME order in MD and sought modification of the order in MD.
- Neither party filed a consent in ME to MD court's exercise of jurisdiction to modify ME order. However, Dad appeared and participated in MD proceeding.
- MD issued an order modifying Dad's support obligation.
- Dad has continued to pay support based on ME divorce order, not MD order.
- MD requested that ME register its modified support order for enforcement.
- Dad, who lives in ME, challenged the registration and requested a hearing. Among the defenses he raised was that the MD court lacked jurisdiction to issue its order, which meant the MD order was not the controlling order.



What would you do?

How should trial court rule?

Options:

- (a) The MD order is void ab initio because no consent was filed with ME tribunal to shift modification jurisdiction to MD. Therefore, the registration is vacated.
- (b) By participating in the MD proceeding, there was implied consent to shift modification jurisdiction to MD. The MD order is a valid order entitled to recognition and enforcement.
- (c) The failure to file consents created a barrier of procedural dimension rather than jurisdictional, which Dad could—and did—waive by participating in MD modification action without objection. The MD order is a valid order entitled to recognition and enforcement.

Vote: (a), (b), or (c)



The court decided...

(a)

The trial court ruled the MD order was void ab initio for failure to comply with the requirements of UIFSA Section 611(a)(2) Modification of Child-Support Order of Another State.

On appeal, the appellate court affirmed.

The issue is whether the consent requirement of UIFSA is jurisdictional or procedural.



The court decided...

The court pointed to the plain language of UIFSA, which refers to continuing, exclusive **jurisdiction**. Moreover, when the drafters intended for a UIFSA requirement to be procedural rather than jurisdictional, it expressly said so. See Section 207(g): the failure to file a certified copy of a determination of controlling order does not affect validity or enforceability of controlling order.

Because Section 611 dictates not how to approach child support modification cases, but whether any of the courts of a given state may address a child support modification case at all—that is, subject matter jurisdiction.

Here, ME had CEJ because Dad continued to reside there. No consents were filed in ME for MD to assume modification jurisdiction. Parties' failure to file consents pursuant to UIFSA section 611 deprived MD court of subject matter jurisdiction to modify ME's child support order, the order MD issued was therefore void ab initio, and the ME trial court correctly declined to register the MD order for enforcement in ME on that basis.



ESTABLISHMENT OR MODIFICATION



Scenario 7

Facts:

- CA divorce decree.
- Mom moved to AZ while divorce proceeding pending. Due to Dad's DV against Mom, parents agreed to Mom being awarded sole custody and Dad having no parenting time or visitation. CA entered custody order reflecting parties' agreement. Order provided that "upon entry of the filing of the parties' marital dissolution, California shall relinquish jurisdiction to Arizona whereby Arizona shall have jurisdiction to make any further child custody and child visitation orders in this case."
- Dad registered CA custody order in AZ under the UCJEA. Neither Parent registered any other order in AZ.
- Two years later Dad sought modification of the custody order, seeking visitation and a child support order under AZ guidelines.
- AZ trial court found there was no existing child support order and ordered Dad to pay \$487.00 in monthly child support based on AZ Guidelines.
- Dad then sought to vacate the order, arguing for first time that CA court had ordered \$0 and AZ lacked jurisdiction to modify the CA order because it had not been registered in AZ. BUT he doesn't produce the order! Court denied father's motion. Dad appeals.



Scenario 7

Options:

- (a) An order that does not address child support is similar to an order for \$0 support. Therefore, the AZ court lacked subject matter jurisdiction to modify the CA order unless it was registered for modification in AZ.
- (b) An order that does not address child support does not meet UIFSA's definition of a child support order. The custody order in this case is not a child support order. Because there is no proof of a child support order entitled to recognition, Section 401 of UIFSA allows AZ to establish a support order if it has personal jurisdiction over the parties.



The court decided...

(b)

We affirm the AZ child support order. We note, however, that we reach this decision based on the record in this case, and Father's failure to prove a previous child support order existed.

Ali v. Ali, 253 Ariz. 102, 509 P.3d 410 (2022)



DURATION OF SUPPORT



Scenario 8

Facts:

- Mom and Dad married and had 2 children.
- NJ divorce decree, ordering Dad to pay child support.
- Later Mom and children move to LA. Dad moves to TX.
- Dad asked TX IV-D agency to review his child support order. TX in turn asked LA to register NJ order in LA for modification. LA registered the order.
- LA agency filed a “Modification Rule to Review and Set Support,” naming both parents as defendants. State alleged substantial change of circumstances because of emancipation of oldest child.
- Hearing officer noted that oldest child was no longer in school and recommended that support order be modified by reducing support obligation.
- Mom objected, contending that NJ provides for child support until age 23 years as long as child is enrolled in college, and that oldest son was registering for college.
- District court granted an exception to hearing officer's findings in part, establishing child support, calculated using LA law, and stating, “[t]he duration of the order is governed by New Jersey law. Oldest child not included in computation as he is not enrolled in college. If child enrolls in college, the custodial parent may seek a modification of the order at that time.”
- Dad appeals. Argues district court erred because it applied both LA and NJ law to determine child support.



Scenario 8

Options:

- (a) NJ lacked CEJ and LA had jurisdiction to modify the registered NJ child support order. In doing so, LA law applies both to determination of the support amount and duration of support.
- (b) NJ lacked CEJ and LA had jurisdiction to modify the registered NJ child support order. In doing so, LA could modify the support amount based on LA law. However, NJ law governs the duration of support because NJ issued the initial controlling order.

Vote:

(a) or (b)



The court decided...

(b)

UIFSA was amended in 2001 to specifically state that the law of the state that issued the initial controlling order governs the duration of support. See Section 611.

Because NJ issued the initial controlling order, NJ law governs the duration of Dad's support obligation. Accordingly, we find no error in district court's determination that LA law governs the amount of the award and NJ law governs the duration of the award.

Under NJ law, support terminates by operation of law at age 19 unless continuation of support is requested, prior to child's 19th birthday, because child is enrolled full-time in post-secondary education. In this case, child is already 19 and has not yet enrolled in college. Therefore, we vacate that part of court's order which states, "[i]f child enrolls in college the custodial parent may seek a modification of the order at that time." Court should not have issued an order based on a contingency that may or may not happen.

State v. Laflamme, 327 So.3d 999 (La. App. 2021)