

NOT DESIGNATED FOR PUBLICATION

No. 91,917

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

DANIEL D. PHILLIPS,
Appellant,

and

KIMBRA L. PHILLIPS (MARTIN),
Appellee.

MEMORANDUM OPINION

Appeal from Johnson District Court; PATRICK D. McANANY, judge. Opinion
filed February 25, 2005. Affirmed.

Daniel D. Phillips, appellant pro se.

Kimbra Martin, appellee pro se.

Before ELLIOTT, P.J., JOHNSON, J., and WAHL, S.J.

Per Curiam: Daniel D. Phillips appeals the dismissal of his motion to establish judgment and determine a repayment schedule for his outstanding child support, complaining that the district court should not have granted full faith and credit to a Washington state court order establishing past due child support. We affirm.

On appeal, both parties are proceeding pro se. Our task is more difficult because we cannot place much confidence in the parties' briefs. Many of the facts asserted are drawn from allegations made in pro se pleadings which are unsupported anywhere else in the record. Many of the documents and orders referenced by the parties are not included in the record on appeal.

Phillips and Kimbra Phillips, now Martin, were divorced in 1989 in Johnson County, Kansas. They had one child for whom Phillips was ordered to pay child support. Shortly after the divorce, Phillips moved to the Missouri side of Kansas City, albeit he claims to have returned to live in Johnson County in 1997. Martin and the child first moved to New Jersey and then, in 1992, they moved to the state of Washington where they continue to reside.

Within a few months of the divorce decree, Phillips fell behind in his child support. A great deal of litigation has occurred over the years in Johnson County,

Kansas; King County, Washington; and Jackson County, Missouri. We will not describe the case history in detail. However, it is important to note that in 1995 Phillips sought and obtained a finding by the Johnson County District Court that all of the parties were then living outside the jurisdiction of Kansas and an order relieving the Johnson County trustee from any further responsibility for the enforcement of the child support order.

On August 23, 2001, the child attained age 18, terminating any further child support. The parties are wrestling over the calculation of past due support and interest. Although the parties would like to rehash their decade and a half of battling, we are presented with an appeal from a Johnson County District Court order, dated November 19, 2003, which dismissed Phillips' motion to establish the amount of arrearage. The Kansas court found that the amounts that Phillips owed for child support had been litigated between the parties in the Superior Court of King County, Washington, and that court had issued its ruling in an order, dated August 14, 2003. The Kansas court refused to relitigate the issues and afforded full faith and credit to the Washington order.

On appeal, Phillips contends the dismissal was erroneous because: (1) the Kansas court retains jurisdiction to interpret its own judgment; (2) the Washington order was not properly before the Kansas court; (3) the Washington order was not of the type to which full faith and credit applies; (4) under the Uniform Interstate Family Support Act

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(UIFSA), K.S.A. 23-9,101 *et seq.*, Kansas retains the final authority on all matters related to the child support order; and (5) Kansas can review the validity of the Washington court's order because it lacked jurisdiction. We disagree.

We are presented with jurisdictional issues which require the interpretation of the UIFSA and the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. § 1738B (2000). "This court has unlimited review of jurisdictional issues and the district court's statutory interpretation. [Citations omitted.]" *McNabb v. McNabb*, 31 Kan. App. 2d 398, 403, 65 P.3d 1068 (2003).

On July 1, 1995, the Kansas Legislature repealed the Uniform Reciprocal Enforcement of Support Act of 1970 (URESAs), K.S.A. 23-451 *et seq.*, and replaced it with UIFSA, K.S.A. 23-9,101 *et seq.* Therefore, the original Kansas child support order in this case was initially governed by URESAs and later by UIFSA. "Both URESAs and UIFSA were promulgated and intended to be used as procedural mechanisms for the establishment, modification, and enforcement of child and spousal support obligations." *Gentzel v. Williams*, 25 Kan. App. 2d 552, 556, 965 P.2d 855 (1998).

Because URESAs allowed a state to establish, vacate, or modify a support order even when a different support obligation had been created in another jurisdiction, there

could be multiple, inconsistent support orders for the same obligor. 25 Kan. App. 2d at 556. "UIFSA establishes a one-order system whereby all states adopting UIFSA are required to recognize and enforce the same obligation consistently." 25 Kan. App. 2d at 556-57. UIFSA provides for the continuing, exclusive jurisdiction of a state issuing a child support order with limited exceptions. K.S.A. 2004 Supp. 23-9,205. Only one controlling support order is in effect at any one time. *In re Marriage of Metz*, 31 Kan. App. 2d 623, 625, 69 P.3d 1128 (2003).

The FFCCSOA, 28 U.S.C. § 1738B, was enacted by Congress in 1994. The purposes of the Act are:

"(1) to facilitate the enforcement of child support orders among the states;

"(2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and

"(3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders." Pub. L. No. 103-383, § 2.

According to the FFCCSOA, a state "(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

(2) shall not seek or make a modification of such an order except in accordance with subsection (e), (f), and (i)." 28 U.S.C. § 1738B(a)(1)-(2). Similarly, UIFSA requires a state to recognize the "controlling order" of a sister state. "If a proceeding is brought under this act and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized." K.S.A. 2004 Supp. 23-9,207(a). Courts have found that the FFCCSOA is intended to be consistent with UIFSA. *LeTellier v. LeTellier*, 40 S.W.3d 490, 498-99 (Tenn. 2001) (reviewing the legislative history of FFCCSOA and finding that Congress did not intend to preempt UIFSA).

Phillips argues that Kansas has continuing, exclusive jurisdiction of the child support order and because of this jurisdiction, no other state can interpret Kansas' judgment. Martin contends that Kansas lost continuing, exclusive jurisdiction when the parties left the state, but she acknowledges that Kansas still has continuing jurisdiction to enforce the child support order.

While the question of whether Kansas has continuing, exclusive jurisdiction is an interesting question, we need not resolve it. Continuing, exclusive jurisdiction might be required to *modify* a child support order, but it is unquestionably not required to *enforce* it. See 28 U.S.C. § 1738B(a)(1). Indeed, in 1995, Phillips sought and obtained a termination of Kansas' enforcement efforts on the basis that Washington was properly

handling child support enforcement. Thus, although the Kansas order controls under the statutory "one-order system," our state is not the exclusive forum in which to enforce the Kansas order.

Phillips further contends that the order from Washington was not properly before the Kansas courts because it had not been registered in accordance with UIFSA. Again, the issue presents a question of law, subject to unlimited review. See *State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas*, 275 Kan. 763, 767, 69 P.3d 1087 (2003).

Under UIFSA, there are several different procedures to enforce a child support order. It can be enforced directly without registration through income withholding or through a support enforcement agency. K.S.A. 2004 Supp. 23-9,501-K.S.A. 2004 Supp. 23-9,507. Alternatively, the child support order can be registered for enforcement or the order can be registered for enforcement and modification. K.S.A. 23-9,601 *et seq.* The general registration provision states that "[a] support order or an income withholding order issued by a tribunal of another state may be registered in this state for enforcement." K.S.A. 23-9,601; Wash. Rev. Code § 26.21.480 (1997).

The Kansas order needed to be registered in Washington in order for the Washington courts to calculate the arrearages. Once registered, "the registering tribunal always must bear in mind that the enforcement procedures taken, whether to enforce current support or to assist collecting current and future arrears and interest are made on behalf of the issuing State, and are not to be viewed as modifications of the controlling order." Sampson, *Uniform Interstate Family Support Act (2001) with Prefatory Note and Comments*, 36 Fam. L. Q. 329, 422-23 (2002) (revised comment for § 603 "Effect of Registration for Enforcement"). Martin first moved to register the Kansas order in Washington in 1995, when none of the parties resided in Kansas. Under UIFSA, a state is obligated to enforce a registered order. K.S.A. 23-9,603(c); Wash. Rev. Code § 26.21.500 (1997). Phillips does not deny that the Kansas order was registered in Washington and refers to the Washington court as the "registering court" in this case.

The Washington order, titled "Order on Show Cause re Contempt/Judgment," clearly states that it is enforcing the Kansas child support order. Washington did not issue a separate or modified support order. See K.S.A. 2004 Supp. 23-9,101(u); Wash. Rev. Code § 26.21.005(21) (1997) (definitions of a support order). Therefore, registration in Kansas of the Washington *enforcement* order was not required.

Next, Phillips argues that under both UIFSA and FFCCSOA, the Washington order is not the type that is entitled to full faith and credit by Kansas. Again, our standard of review is unlimited. *Morrison*, 275 Kan. at 767. Phillips relies on *Summitt v. Summitt*, 31 Kan. App. 2d 812, 74 P.3d 584, *rev. denied*, 277 Kan. 928 (2003), and *Westend Development v. Westend Amusement*, 594 So. 2d 553 (La. App. 1992), to support his argument that a sister state's interpretation of another state's judgment is not binding. We have reviewed those cases and find them to be factually distinguishable.

The Johnson County District Court was not limited to the FFCCSOA. The Full Faith and Credit Clause of the Constitution, U.S. Const. art. 4, § 1, is codified in 28 U.S.C. § 1738 (2000). The statute provides that records and judicial proceedings are entitled to full faith and credit if they are authenticated by the attestation of the clerk and the seal of the court. Martin admitted a certified copy of the Washington order in her motion to dismiss. Since the record was in the proper form, the Kansas district court had the authority to afford full faith and credit to the Washington court's findings.

While Johnson County may well have possessed the authority to recalculate Phillips' arrearages, it was not required to do so, if for no other reason than the principle of comity.

"Judicial comity is a principle by which the courts of one state or jurisdiction give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect. Comity is not binding on the forum state, but is a courtesy extended to another state out of convenience and expediency. [Citation omitted.]" *Boyce v. Boyce*, 13 Kan. App. 2d 585, 587, 776 P.2d 1204, *rev. denied* 245 Kan. 782 (1989).

Comity and full faith and credit are sometimes used interchangeably, although "[f]ull faith and credit is based upon the United States Constitution, whereas comity is based upon policy considerations." 13 Kan. App. 2d at 588.

The parties had been before the court in Washington and litigated the various issues currently in dispute. UIFSA was designed to require states to consistently enforce the same child support obligation, and FFCCSOA strives to discourage interstate controversies over child support in which sister states engage in jurisdictional competition and conflict in establishing child support orders. Washington recognized and applied the Kansas child support order. Consistent with the letter and spirit of the law, it was appropriate and consistent with the "one-order system" for Kansas to refuse to relitigate Washington's arrearage calculation.

Finally, Phillips argues that the Washington court did not have jurisdiction under UIFSA to determine the arrearages, thus permitting a collateral attack in Kansas to

contest subject matter jurisdiction. His argument on this point is limited to subject matter jurisdiction. He presents a legal question, invoking de novo review. See *In re Tax Appeal of City of Wichita*, 277 Kan. 487, 506, 86 P.3d 513 (2004).

We first note that Phillips' argument is inconsistent with the position that he took in 1995. Nevertheless, we disagree with Phillips' statutory interpretation and hold that Washington had subject matter jurisdiction to enforce the Kansas child support order which had been registered in that state. Further, we affirm the Johnson County District Court's holding that Phillips is precluded from relitigating the issue of the Washington court's jurisdiction under the principle of res judicata.

Affirmed.

A true copy ATTEST
Carol J. Green
Clerk Supreme Court

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