

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

In the Matter of the Marriage of)
)
DANIEL D. PHILLIPS) Case No. 89CV6890
) Court No. 14
and) K.S.A. Chapter 60
)
KIMBRA L. PHILLIPS (MARTIN))
)

ORDER DENYING MOTION FOR RECONSIDERATION

Petitioner Phillips moves this court to reconsider its November 19, 2003, order granting respondent Martin's Motion to Dismiss and denying petitioner's motion for an order establishing an outstanding balance of child support payments. Phillips reiterates the jurisdictional arguments set out in his original motion. Essentially, Phillips maintains that, in computing the arrearage owed, the Washington court exceeded its enforcement jurisdiction, and effectively modified this court's original child support order. Phillips contends that, because this court issued the original child support order, this court maintains continuing exclusive jurisdiction over this case. For support, Phillips cites *Linn v. Child Support Enforcement*, 736 A.2d 954 (Del. 1999).

Although *Linn* is a Delaware case, this court finds the *Linn* court's reasoning persuasive. In *Linn*, the original 1983 order required Mr. Linn to pay 30% of his salary as child support and to pay 50% of accrued medical bills. In 1995, Mrs. Toman filed in Minnesota a petition for arrears, current support, and medical and dental expenses, requesting the court to compute the amount of the arrearage. The Minnesota court issued an order holding that Mr. Linn owed \$30,458.00 in arrears, \$4,731.05 in medical and dental expenses, and \$750.00 per month in current support. On appeal, Mr. Linn argued that the Minnesota arrearages order was a modification of the original order and that the Minnesota court did not have jurisdiction to modify the original order.

Exhibit
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Rejecting Mr. Linn's argument that computation of the arrearage constituted a modification of the original support order, the court stated:

Ms. Toman's 1995 petition in Minnesota requested arrears for unpaid support accruing as of April 1987 under the 1983 order that required payment by Mr. Linn of 30% of his salary and for 50% of accrued medical bills. In 1995, Ms. Toman was only seeking to enforce the 1983 order, not to modify it. Additionally, Ms. Toman sought a monetary calculation of the 1983 order to facilitate enforcement via a wage attachment. She requested that the Minnesota court compute the sums due under the 1983 Order, whereby 30% of Mr. Linn's salary was to be paid, to arrive at an enforceable dollar figure. Ms. Toman did not seek to increase, decrease or change the amount of the 1983 order; therefore, the 1995 order was not a modification of the earlier order . . .

Id. at 964-65. Compare *Summitt v. Summitt*, ___ Kan. App. 2d ___, 74 P. 3d 584 (2003)(under the Uniform Interstate Family Support Act, Kansas child support orders sent to North Carolina for enforcement were not nullified by North Carolina's determination that no arrearage existed).

Additionally, the *Linn* court rejected Mr. Linn's attempts to attack in Delaware the Minnesota arrearage order on the merits since he received notice of the Minnesota hearing but did not request modification or otherwise challenge the arrears. Significantly, the court found that Linn could "not now attempt to modify, in Delaware, the Minnesota 1995 Arrearages Order that has been filed for enforcement in Delaware," and that to "allow Linn to challenge the Minnesota 1995 Arrearages Order would violate 28 U.S.C. 1738B ([Full Faith and Credit for Child Support Orders Act (FFCCSOA)] and the full faith and credit provisions of the United States Constitution." Thus, the court stated, "if Mr. Linn wishes to challenge the arrears calculation in the 1995 Minnesota Arrearages Order, he must do so in Minnesota." *Linn v. Delaware Child Support Enforcement*, 736 A. 2d at 968-69.

Phillips' contention that this court has continuing exclusive jurisdiction to modify the

original child support order is irrelevant to the enforcement issues before this court. The term 'continuing, exclusive jurisdiction' is used in the Uniform Interstate Family Support Act (UIFSA) Kan. Stat. Ann. § 23-9, 101 *et seq.* to indicate that only one tribunal has jurisdiction to modify a child support order at a time; and that tribunals in jurisdictions that have enacted UIFSA have subject matter jurisdiction to enforce the one-order, provided they have personal jurisdiction over the respondent. *Id.* at 959; UIFSA Prefatory Note, 11(B)(3) (1992), §§ 204-208 (1992). *See e.g.*, *Gentzel v. Williams*, 25 Kan. App. 2d 552, 965 P.2d 856 (1989).

The 1996 revised comment to Section 611 of UIFSA states: 'under UIFSA, registration is subdivided into distinct categories, registration for enforcement, or modification, or both. UIFSA is based on recognizing the truism that when a foreign support order is registered for enforcement, the rights of the parties affected have been previously litigated. Because the obligor already has had a day before an appropriate tribunal, an enforcement remedy may be summarily invoked. On the other hand, modification of an existing order presupposes a change in the rights of the parties.'

Linn v. Delaware Child Support Enforcement, 736 A.2d at 962-63.

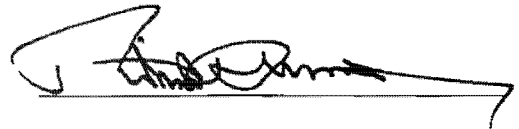
While Phillips correctly argues that this court retains jurisdiction to enforce the original child support order, any UIFSA state wherein the original order has been registered also has subject matter jurisdiction to enforce the order. *Id.* at 962, (under UIFSA, a valid child-support enforcement order, which has not been modified, remains in effect in the issuing state and those states in which the order has been registered). Therefore, after Martin moved to enforce the original Kansas order in Washington, Washington had enforcement jurisdiction. As in *Linn*, Washington State's mere calculation of the arrearage and medical and dental expenses under the original order did not transform Washington's enforcement proceeding into a modification proceeding.

This court finds that the motion to reconsider is without merit and adheres to its previous

ruling that the Washington court's calculation is *res judicata* as to the amount of the arrearage. Accordingly, Phillips may not collaterally attack the Washington court's order in Kansas, but must challenge the order in the Washington appellate courts.

IT IS THEREFORE ORDERED BY THE COURT that the Motion for Reconsideration is **DENIED**.

Dated this 6th day of January, 2003.



PATRICK D. McANANY
District Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order Denying Motion for Reconsideration was mailed to all counsel of record this 6th day of January, 2004, the date of the filing of this Order.



LISA POLSON
Administrative Assistant