

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

In the Matter of
KIMBRA (PHILLIPS) MARTIN
and
DANIEL PHILLIPS.

Case No. 07CV3318
Court No. 9
K.S.A. Chapter 23 and 60

JOURNAL ENTRY OF JUDGMENT

On August 19, 2008, the parties appear for trial. Petitioner appears in person and by her attorney, Janet L. Damore. Respondent appears pro se.

WHEREUPON, the Court, having heard the testimony of the parties, having reviewed the file, including the suggestions of the parties and the various exhibits, announces its decision as follows:

I. Nature of the Case

1. This is an action to register in Kansas a judgment from the State of Washington under the Uniform Interstate Family Support Act, commonly referred to as UIFSA.
2. The Petitioner-Mother contends that Kansas courts can enforce child support judgments entered in the State of Washington pursuant to court proceedings enforcing an original Kansas child support order.
3. The Respondent-Father contends the registration is fatally defective for a number of reasons, as set forth in his pleadings and in the pretrial order.

II. History

4. The history of this case is complex and protracted. The Court will attempt to summarize the key facts of this case and provide a review to further help the parties and any other appellate court understand the Petitioner's claims and the Respondent's defenses.

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5. Kimbra Phillips and Daniel Phillips were divorced in the District Court of Johnson County, Kansas, on June 30, 1989 in Case No. 89 CV 6890. Daniel was required to pay \$750 per month for child support to Kimbra to support the parties' minor son, [REDACTED] Phillips. *Respondent's Exhibits 201 and 202.*

6. The parties agreed the District Court of Johnson County, Kansas had subject matter jurisdiction, personal jurisdiction over the parties, and that venue was properly placed in Johnson County, Kansas. *Respondent's Exhibit 202 at page 2, paragraph 5.*

7. At this point in time Kansas had "continuing exclusive jurisdiction," pursuant to K.S.A. 23-9,205(a)(1), over the child support order.

8. On December 9, 1993, a written stipulation was filed with the Clerk of the Court which stated that Daniel Phillips' child support obligation would be reduced to \$403 per month effective September 15, 1993. The stipulation also reflects that Kimbra Phillips, now Owen, had moved to King County, Washington and that Daniel Phillips had moved to Jackson County, Missouri. *Respondent's Exhibit 203.*¹

9. On December 9, 1993, Judge Bouska signed an order approving the stipulation. *Respondent's Exhibit 204*

10. As of December 23, 1993, Daniel Phillips was a practicing attorney in Kansas City, Missouri. *Respondent's Exhibit 205.*²

¹ Please note that there was a minor error on Exhibit 203, in that Mark Lewis was the attorney for respondent, Kimbra Owen, and not attorney for Petitioner. The signature block page is in error.

² The Court believes Mr. Phillips was a practicing attorney before that time. However, the only proof in the record is in Exhibit 205.

11. On or about June 7, 1995, the Kansas child support order was registered in the Superior Court of the State of Washington, King County, in Case No. 93-3-03315-3. *Respondent's Exhibit 207.*

12. Initially the Washington state court found that it had jurisdiction to "modify" the Kansas child support order. This finding was in error and was eventually corrected through litigation in the State of Missouri and in the State of Washington. *See Phillips v. Fallen*, 6 S.W.3d 862 (Mo. 1999), *Petitioner's Exhibit 10*; and *In Re Marriage of Owen and Phillips*, 108 P.3d 824 (Wash. Ct. App. 2005), *Petitioner's Exhibit 11.*

13. The Washington Court of Appeals found the Superior Court in the State of Washington had subject matter jurisdiction to enforce the Kansas support order, (*See In Re Marriage of Owen and Phillips*, supra, at 829), and that the Court in Washington had personal jurisdiction over Phillips for the purposes of enforcing the Kansas support order. *See In Re Marriage of Owens and Phillips*, supra, at 830.

14. The Missouri Supreme Court found as follows:

"In conclusion, the Washington court had no subject matter jurisdiction to modify the Kansas child support amount. The Washington court's conclusion that it did have subject matter and personal jurisdiction to determine the amount of the arrearage and interest due is entitled to full faith and credit. Although the Director's order properly considered the arrearage and interest, the Director improperly included the Washington court's modified child support amount as a factor in the enforcement order."

In other words, Missouri affirmed the findings of the Washington court that they had subject matter jurisdiction and personal jurisdiction over Daniel Phillips to enforce the child support order. *Petitioner's Exhibit 10, Phillips v. Fallen*, supra, at 868.

15. Daniel Phillips further attempted to re-litigate the issue of the Washington court's jurisdiction in the District Court of Johnson County, Kansas, in Case No. 89 C 6890. The

Johnson County trial court denied Daniel Phillips' collateral attack on the Washington court judgment enforcing the Kansas order.

16. On appeal to the Kansas Court of Appeals, the Kansas Court of Appeals through Presiding Justice Elliott held as follows: "Further, we affirm the Johnson County District Court's holding that Phillips is precluded from re-litigating the issue of the Washington court's jurisdiction under the principle of res judicata." *See Phillips v. Martin*, Kansas Court of Appeals, Appellate No. 04-91,917, Not Designated for Publication, February 25, 2005. *Petitioner's Exhibit 12*.

III. Findings

17. For the reasons set forth in its memorandum decision and for the reasons set forth in the record of the hearing, this Court finds:

18. The appellate court in Washington and the Supreme Court in Missouri have judicially determined that Washington had subject matter jurisdiction to enforce the Kansas child support order and personal jurisdiction over Daniel Phillips to enforce the Kansas child support order.

19. Daniel Phillips may not and cannot collaterally attack the Washington judgment in Kansas courts.

20. On April 26, 2007, a Notice of Registration of Support Order under the Uniform Interstate Family Support Act, UIFSA, was filed with the Clerk of the District Court of Johnson County, Kansas, in Case No. 07 CV 3318. It was assigned to Division 9, this division.

21. Kimbra Phillips, now Martin, is listed as the first party, and Daniel Phillips is listed as the second party.

22. The Court has reviewed the petition and the supporting documentation. Based upon this review and a review of the Uniform Interstate Family Support Act, as enacted in Kansas, and for the reasons set forth in the record this Court finds that the enforcement action from the State of Washington has been properly registered in the District Court of Johnson County, Kansas, in 07 CV 3318.

23. The Court finds it is properly registered pursuant to K.S.A. 23-9,601 and 602.

24. The Court now finds that the burden of proof has shifted to Daniel Phillips, pursuant to K.S.A. 23-9,607(a), to prove one or more of the defenses set forth in K.S.A. 23-9,607(a)(1)through (7).

25. More specifically, the Court finds that Daniel Phillips has the burden of proof and must prove his claims by evidence that is more probably true than not true, or by a preponderance of the evidence. *See* K.S.A. 60-401(d). Additionally, the Court finds that Daniel Phillips has the burden of producing evidence pursuant to K.S.A. 60-401(e).

26. Turning now to K.S.A. 23-9,607(a)(1), the Court finds that there is no allegation that the District Court of Johnson County, Kansas, as the issuing tribunal, lacked personal jurisdiction. In fact, Daniel Phillips has signed the stipulation that modified his child support downward, and he signed the original property settlement agreement which was incorporated into the decree. He signed the property settlement agreement that created the initial child support order. *Respondent's Exhibit 201.*

27. Further, the Court finds that Daniel Phillips' attorney signed the decree of divorce. That is Mr. Bacon. *Respondent's Exhibit 202.* At the time the mother, father and child were in Johnson County, Kansas.

28. Turning now to K.S.A. 23-9,607(a)(2), there is no allegation the order was obtained by fraud, nor is there any evidence presented of fraud.

29. In reference to K.S.A. 23-9,607(a)(3), there is no allegation the order has been vacated, suspended or modified by a later order, except Exhibits 203 and 204.

30. In reference to K.S.A. 23-9,607(a)(4), the Court is unaware of any stay in any legal proceeding staying this matter. Furthermore, the Court in reviewing the pleadings and pretrial order does not find an allegation that there is a stay in effect.

31. In reference to K.S.A. 23-9,607(a)(5), the Court finds there is no evidence in the record to establish a defense under the law. Mr. Phillips does contend that he was denied due process of law by the Washington courts and perhaps by other courts. However, the record is replete with pleadings and appeals. It appears that he did have, (a) notice and, (b) an opportunity to be heard. Whether he complied with the procedural requirements of the Washington trial court and appellate court is an issue that he would have to litigate in the State of Washington.

32. Further, Daniel Phillips argues that he was charged criminally in the Federal District Court for the Western District of Washington in Case No. CR03-0539 MJB. *Respondent's Exhibit 225*. In this case Daniel Phillips entered into a plea agreement with the prosecutor, the U.S. Attorney for the Western District of Washington, wherein he pled guilty to the offense of failure to pay child support as defined by 18 USC, Section 228(a)(1). As a part of the restitution in this case, he was ordered to pay \$36,096. *Petitioner's Exhibits 14 and 15 and Respondent's Exhibits 225 and 227*. Daniel Phillips argues that by paying the \$36,096 he satisfied all child support obligations, whether due in the federal court or the state courts.

33. This court finds that Kimbra Phillips Owen Martin was never a party to the federal criminal non-support action.

34. This court finds that Kimbra Phillips Owen Martin was not represented by the U.S. Attorney's Office, in that the U.S. Attorney represents the federal government.

35. Further, as demonstrated by Respondent's Exhibit 229, Kimbra Martin did not consent to the amount of restitution.

36. Based upon a review of the federal court pleadings, this court finds that the federal court restitution order does not bar Kimbra Phillips Martin from attempting to collect her state court judgment. The Court notes that there is no satisfaction of judgment of the state court judgment filed of record.

37. The Court finds that Daniel Phillips has not established a defense under the law of accord and satisfaction or payment and release.

38. In reference to K.S.A. 23-9,607(a)(6), the same argument can be made. The Court would incorporate the comments and findings it just made as to no accord and satisfaction or payment and release.

39. In reference to K.S.A. 23-9,607(a)(7), Daniel Phillips argues that the state court judgments for child support, whether in Kansas or Washington, for child support and for unreimbursed medical expenses are barred by the statute of limitations and/or the judgments are dormant.

40. Pursuant to K.S.A. 60-2403a, the Court finds that Kimbra Martin's efforts to register the judgment in the State of Washington or the Court Trustee's efforts and her further pursuit of child support in the various courts outlined in this opinion and in the exhibits, constitute a "support enforcement proceeding."

41. While this court does not have time to review all of the legislative history behind K.S.A. 60-2403a, it has ruled on this statute in other cases. It is clear that the Kansas legislature

was responding to an appellate court decision they felt was unduly restrictive, and the legislature has made it very clear that a support enforcement proceeding is to have a broad definition. This legislative intent has been accepted by the Kansas appellate courts.

42. Thus, the Court finds that there has been a support enforcement proceeding which prevents the judgments being dormant.

43. In reference to the statute of limitations for Washington, the Court notes that the Washington court had subject matter jurisdiction and personal jurisdiction over Daniel Phillips. If he had a claim that the medical expense reimbursement was barred by the statute of limitations, that is an affirmative defense that must be raised and proved. That would have had to have been done in the court that issued the judgment, the Superior Court in the State of Washington. There is no evidence before the court that this was done.

44. In addition, to address the argument that the judgments from Washington are dormant, the Court takes judicial notice of R.C.W. 6.17.020(2):

“After July 23, 1989, a party who obtains a judgment or order of a court or an administrative order entered as defined in R.C.W. 74.20.020(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment or other legal process issued upon that judgment or order at any time within ten years of the 18th birthday of the youngest child named in the order for whom support is ordered.”

45. In this case, [REDACTED] Phillips was born on [REDACTED], 1983. *Respondent's Exhibit 201*. He became 18 years of age on [REDACTED], 2001. The ten-year statute would extend the enforcement effort through [REDACTED], 2011.

46. For these reasons, the Court finds that the statute of limitations does not apply and the judgments are not dormant.

47. Finally, Mr. Phillips contends that the Uniform Interstate Family Support Act does not apply when the judgment sought to be enforced is returned to the issuing tribunal for enforcement. In other words, the original child support order emanated from the issuing tribunal, the Johnson County District Court; it was registered in the State of Washington; the State of Washington has entered an enforcement judgment, and has now sent that back to Kansas for enforcement. Mr. Phillips contends that because the action is now in the initiating tribunal, UIFSA does not apply.

48. In support of this position, Mr. Phillips relies upon a Tennessee case, *LeTellier v. LeTellier*, 40 S.W.3d 490 (1992). The Court has researched this question, and finds there is no Kansas law on point. Further, the court finds the *LeTellier* case does not stand for the proposition asserted by Mr. Phillips that UIFSA does not apply. In fact, the Court believes that K.S.A. 23-9,601 answers the issue raised by Mr. Phillips.

49. K.S.A. 23-9,601 provides: "A support order or an income withholding order issued by a tribunal of another state" (Washington) "may be registered in this state" (Kansas) "for enforcement." So this Court sees no reason why that statute does not apply. It allows Kansas to enforce the enforcement judgment from Washington. The trial court does not have time to elaborate upon all of the legislative history behind the Uniform Interstate Family Support Act, other than to note the purpose and rationale behind this statute is to facilitate the collection of child support. Further, the primary thrust of this statute is to ensure that there is only one controlling order and that the statute is to be liberally construed in order to enforce its purposes, which is the collection of child support in a timely and efficient way, given the fact that we are a mobile society and parties move from one state to another.

50. For these reasons, the Court finds that Kansas does have the authority to enforce the enforcement judgment from the State of Washington.

51. To summarize, the Court finds the judgment from the State of Washington is properly registered and that the respondent, Daniel Phillips, has not met his burden of proof to establish a defense to the registration. The judgment or registered order is hereby confirmed pursuant to K.S.A. 23-9,608.

52. Therefore, the Kansas court and the appropriate Trustee programs may enforce the judgment registered in this action, 07 CV 3318.

IV. Attorneys' Fees

53. Kimbra Martin is requesting an award of attorneys' fees and costs pursuant to K.S.A. 23-9,313(b). This statute provides: "If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorneys' fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses."

54. Daniel Phillips has opposed the registration of the enforcement judgment in this action. His defenses are set forth in the pleadings and the pretrial order, and essentially he attempts to re-argue the question of subject matter jurisdiction and personal jurisdiction in Washington.

55. The Court finds that that contest has already been judicially determined. The father, Daniel Phillips, did not prevail and, in fact, has lost each time he has raised the issue. He lost in the Missouri Supreme Court, the Washington Court of Appeals and the Kansas Court of Appeals.

56. Further, the Court finds that the due process arguments he makes have no basis in fact and that there is no basis to accept his argument that the state court judgments have been satisfied by the payment in the federal court action.

57. In reference to Petitioner's Exhibit 23, Kimbra Martin requests attorneys' fees for the efforts of Ronald Rundberg and his law firm in the original divorce action, 89 CV 6890, and in an enforcement action brought before this division of the District Court, Division 9, in 05 CV 115.

58. In Case No. 05 CV 115, this court ultimately dismissed that registration on the grounds that the Washington Court of Appeals had vacated the judgment, and therefore there was no final judgment to register. Because the obligee did not prevail, the obligor did, this court would not award attorneys' fees for work in 05 CV 115.

59. In reference to 89 CV 6890, the Court notes that the attorneys' fees efforts started in April of 2004 and go forward to 2007. Part of this work is for the action this court dismissed and for which the court cannot award attorneys' fees. Given the fact that these claims are quite old, given the fact that these fees are not a part of the registration in 07 CV 3318, this court is reluctant to conclude that it can use K.S.A. 23-9,313 to award attorneys' fees in the original divorce action. So the request for attorneys' fees contained in Exhibit 23 is denied.

60. In reference to Petitioner's Exhibit 24, an attorney, Michael D. McKay, certifies that he is a member of the law firm of McKay & Chadwell in Seattle, Washington; that he represented Kimbra Martin in this very registration action, 07 CV 3318. The Court has reviewed the bills from Mr. McKay and finds that they are reasonable and that they are related to this registration action in which the obligee, Kimbra Martin, has prevailed. The Court is going to award attorneys' fees of \$8,954.79 which includes his costs.

61. In reference to Petitioner's Exhibits 25 and 25A, the Court finds that Janet Damore is the sole member of the Damore Law Firm; that she has represented Kimbra Martin in this very registration action, 07 CV 3318. The court has reviewed her bills in 25 and 25A, and finds that these services were performed to register the judgment in Kansas and that the obligee prevailed in this action. The court is awarding attorneys' fees and costs of \$14,451.74, as set forth in Exhibit 25, plus the attorney's fees of \$6,325.00 in Exhibit 25A, plus time since August 19, 2008 through the preparation and filing of the journal entry of judgment in this action, which the Court is directing Ms. Damore to prepare.

62. In reference to Petitioner's Exhibit 26, the court finds that the petitioner, Kimbra Martin, had travel expenses to attend the hearing on July 10, 2008 and the trial on August 19, 2008, totaling \$1,835.74. Because the obligee prevailed, the court will award those transportation costs as necessary travel expenses pursuant to K.S.A. 23-9,313(b).

63. Pursuant to Petitioner's Exhibit 27, the Court will award interest on the judgment as calculated and set forth herein. The Court takes judicial notice of R.C.W. 4.56.110(2): "All judgments for unpaid child support that have accrued under a Superior Court order or an order entered under the Administrative Procedure Act shall bear interest at the rate of 12 percent."

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| 1. | Judgment for accrued interest on unpaid child support | 17,266.00 |
| 2. | Interest on judgment from August 14, 2003 to August 18, 2008 (at 10%) | 8,656.65 |
| 3. | Attorney's fees: per August 14, 2003 order | 6,000.00 |
| 4. | Interest on Attorney's fees from August 14, 2003 to August 18, 2008 (at 12%) | 3,625.64 |
| 5. | Attorney fees: per October 8, 2003 order | 750.00 |
| 6. | Interest on Attorney's fees from October 8, 2003 to August 18, 2008 (at 12%) | 437.67 |
| 7. | Unreimbursed medical expenses per August 14, 2003 order | 12,338.00 |
| 8. | Interest on unreimbursed medical expenses from August 14, 2003 to August 30, 2006 (@8.25%) | 3,451.34 |
| 9. | Interest on unreimbursed medical expenses from August 30, 2006 to August 18, 2008 (@10%) | 2,430.42 |
| 10. | Attorney fees: per September 6, 2006 order | 3,034.00 |
| 11. | Interest on Attorney fees from September 6, 2006 to August 18, 2008 (at 12%) | 710.21 |
| 12. | Attorney fees (for appeal): per September 6, 2006 order | 6,132.05 |

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| 13. | Interest on Attorney's fees from September 6, 2006 to August 18, 2008 (at 12%) | 1,435.40 |
| | TOTAL JUDGMENT THROUGH AUGUST 18, 2008 | 66,267.38 |

64. This Court's judgment will become final upon the filing of the Journal Entry of Judgment with the Clerk of the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above findings are the Orders of this Court.

IT IS FURTHER ORDERED AND DECREED that petitioner shall have judgment against respondent in the sum of \$8,954.79 for costs and attorney fees incurred by petitioner to the law firm of McKay & Chadwell. Said judgment shall be subject to execution and shall bear interest at the effective judgment rate.

IT IS FURTHER ORDERED AND DECREED that petitioner shall have judgment against respondent in the sum of \$20,776.74 for costs and attorney fees incurred by petitioner to The Damore Law Firm, LLC through August 19, 2008. Said judgment shall be subject to execution and shall bear interest at the effective judgment rate.

IT IS FURTHER ORDERED AND DECREED that petitioner shall have judgment against respondent in the sum of \$1,890.64 for costs and attorney fees incurred by petitioner to the Damore Law Firm, LLC from August 19, 2008 through the preparation and filing of the journal entry of judgment in this action. Said judgment shall be subject to execution and shall bear interest at the effective judgment rate.

IT IS FURTHER ORDERED AND DECREED that petitioner shall have judgment against respondent in the sum of \$1,835.74 for travel expenses to attend the hearing on July 10, 2008 and the trial on August 19, 2008. Said judgment shall be subject to execution and shall bear interest at the effective judgment rate.

IT IS SO ORDERED.

ALLEN R. SLATER

The Honorable Allen R. Slater
District Judge

Submitted by:

The Damore Law Firm, LLC
5350 College Boulevard, Suite 201
Overland Park, KS 66211
(913) 890-2051
(913) 890-2052 facsimile

Janet L. Damore
Janet L. Damore
Kansas Supreme Court #15386
Attorney for Petitioner

Approved by:

Daniel D. Phillips
11912 W. 66th Terrace
Shawnee, KS 66216
(913) 909-8816
(913) 962-1167 facsimile

Rule 170
Daniel D. Phillips
Respondent pro se

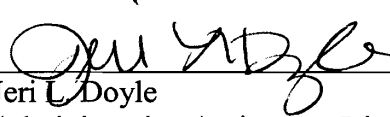
27 Oct 08
27 DAY OF Oct 08
Shawnee, MO
Shawnee, MO
Shawnee, MO

Certificate of Mailing

I hereby certify that I mailed a copy of this Journal Entry of Judgment by placing it in the United States Mail, Postage prepaid on the 27th of October 2008 to the following:

Janet L. Damore
5350 College Boulevard, Suite 201
Overland Park, KS 66211
Attorney for Petitioner

Daniel D. Phillips
[REDACTED]
Shawnee, KS 66216
Respondent Pro Se



Jeri L. Doyle
Administrative Assistant – Division 9