Collecting Child Support: The Uniform Interstate Family Support Act and How It Helps Parents

By Chaim Steinberger

How can we prevent different jurisdictions from issuing inconsistent or contradictory orders? That is, if Dad gets a custody or support order from one state, what's to prevent Mom from getting an inconsistent or contradictory order from another state? With competing orders, we could be faced with state troopers from each of the different states lined up along their common border, ready for a shootout to enforce their respective state's order. Or, perhaps just as bad, have parents abduct their children from the other parent's jurisdiction into their own, where they were awarded custody. A parent who complies with the child support order of his own state might have reason to fear entering the jurisdiction of the other parent because he might be served with a summons for additional support or be arrested for failing to comply with that other state's support order. Competing orders result in chaos, with parties unsure which orders are operative, which can be enforced, and which must be abided. These were the issues the Uniform Law Commission (ULC) sought to resolve by proposing uniform laws that, once adopted by the states, would ensure that no inconsistent or contradictory orders are ever issued.

In the custody arena, the ULC promulgated the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA). For support orders, it promulgated the Uniform Interstate Family Support Act (UIFSA), the subject of this article. Together, they ensure that everyone always knows which venue has jurisdiction to first issue and later modify custody and support orders. All other states must honor and abide by properly issued orders and ignore any improperly issued ones.

Because all states wanted to receive federal Title IV-D funds, they all individually enacted UIFSA (the Act). There are some minor variations in some states' enactments, so be sure to consult the controlling legislation in the jurisdiction in issue. The major themes running through the enactments, if borne in mind, make them easily understandable and make the Act easy to apply and use.

HOME GAME VS. AWAY GAME

An important characteristic of these acts is that they do not determine the ultimate result. They do *not* determine which party will "win" and which one will "lose." Rather, to apply a

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phrase commonly known to sports fans, the acts determine only whether the litigation contest will be a "home game" or an "away game." That is, can plaintiffs commence the action in their own jurisdiction, or must they retain counsel in the other party's jurisdiction and litigate in the defendant's home court?

To ensure that no competing orders are ever issued, the Act mandates that at any point in time, only one state can have jurisdiction to enter an initial order or, thereafter, to modify a prior one (§ 207). In many cases, there will be no choice of jurisdictions, and the Act will determine where the action may proceed. Orders issued by a court that is not authorized to issue them are ineffective and rendered null. Orders issued in the authorized venue must be accorded full faith and credit by every other court and jurisdiction. Thus, only orders issued by a proper court will be given effect. And there will usually be only one court that is authorized to issue such orders. As a result, litigants and enforcement agencies will always know where to sue, which orders must be followed, and which terms need to be enforced. Litigants will never have to wonder whether the terms of an order from state "A" are operative or the contradictory ones from state "B" are.

INITIATING A SUPPORT PROCEEDING

The remedies provided by UIFSA to a parent seeking child support are cumulative and exist in addition to all of the parent's otherwise existing legal rights (§ 301). UIFSA is, therefore, not restrictive but expansive in this regard, according more rights than a parent previously had. Support petitions against a local respondent can, as always, be brought locally. In addition, the Act expands the basis on which a local court can assert personal jurisdiction over even an out-of-state noncustodial parent.

The Act expands the basis on which a parent can seek child support over an out-of-state parent to the maximum extent permitted by the Constitution (§ 201(a)). Jurisdiction can, as always, be obtained over a non-resident by serving the summons on the defendant inside the state. It can also be obtained over the defendant if the child might have been born from intercourse that occurred inside the state. The state court can also assert jurisdiction over a noncustodial parent who caused the child to live in the state. That can happen, for example, by the defendant having put the pregnant plaintiff on a bus to the local jurisdiction where the child was eventually born. Explicit or implicit consent to the local forum also suffices. As a result, a defendant who asserts parentage in the putative father registry of a state is deemed to have consented to the jurisdiction of that state's courts and can, therefore, be sued there for child support. Finally, a defendant who "acted like a parent" within the local jurisdiction by, for example, providing support or living as a family unit with the child, is also subject to the court's jurisdiction even if the defendant no longer lives within the state.

Be careful, however, of applying this last basis in an overly formulaic, rigidly literal manner. Any application of these UIFSA rules must still comport with constitutional due process requirements (*see, e.g., Kulko v. Superior Court*, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978)). So, where the parties lived with the child as a family unit in the local jurisdiction for a substantial period of time, the Act allows the local court to assert jurisdiction over the departed parent. As the Act's official comments note, however, the Act does not specify the length of time or the amount of support necessary to trigger the assertion of personal jurisdiction over the noncustodial parent. If there was but a fleeting connection with the local state, asserting jurisdiction on that basis may run afoul of the "substantial contacts" required to satisfy due process. A practitioner would be advised to use caution and judgment when applying the last jurisdictional provision.

Anytime the local court can assert personal jurisdiction over the payor parent on one of these bases, the recipient parent can institute suit for an initial support order locally without the

Under UIFSA, only one state can have jurisdiction to enter or modify an order.

need to traverse state lines.

If the local venue cannot, however, properly assert personal jurisdiction over the payor parent, the parent seeking the support order must resort to a court that does have personal jurisdiction over the payor. The payee is therefore forced to "play an away game" in the payor's jurisdiction.

The plaintiffs, however, have a choice of how they can do so. They have two alternatives. They can institute suit directly in the venue that has jurisdiction over the payor. Alternatively, the Act allows plaintiffs to commence suit in their local jurisdiction, which then transmits the claim to the venue with jurisdiction over the payor. In the language of the Act, the local jurisdiction is then called the "initiating" tribunal and the remote one the "responding" tribunal (§ 301).

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Under this interstate procedure, the plaintiff need not worry about travel to the payor's jurisdiction to file the initiating papers or to appear for trial. The Act requires the initiating court to transmit the commencement papers to the responding tribunal on the plaintiff's behalf. Moreover, the Act requires the responding tribunal to permit the plaintiff to appear virtually, using electronic means. It also requires the responding tribunal to admit as evidence documents that are transmitted to it via electronic means without rejecting them on the basis that they are only facsimiles and not "original" documents (§ 316).

Thus, the Act removes custodial parents' main impediments to obtaining child support from out-of-state noncustodial parents.

It should be noted that the expansive basis on which to obtain jurisdiction over the payor applies only to initial child support awards. When a party seeks to modify an already existing support order, the Act limits where such a modification petition can be brought. This is so that a payor parent need not fear being served with a modification petition when entering the payee parent's jurisdiction to visit his or her children (§ 201(b)).

CONTINUING EXCLUSIVE JURISDICTION AND MODIFICATION OF A PRIOR SUPPORT ORDER

A court that properly enters a support order in accordance with the Act retains "continuing exclusive jurisdiction" to modify it (§§ 202, 205). Until conditions on the ground change to divest it of its continuing exclusive jurisdiction, no other venue's courts may modify the order. This serves the Act's purpose of preventing conflicting orders from different courts.

So long as either of the two parties or their child continues to reside in the jurisdiction that entered the operative, or controlling, order, that jurisdiction retains its continuing exclusive jurisdiction, and it remains the only court that can modify it.

If all three—the two parties and their child—have moved out of the state that entered the controlling support order, then the Act determines which venue's court can modify it. If both parents moved to the same second state (with or without their child), then that second state now has jurisdiction to modify the child support order of the first state (§ 613). If the parents moved to separate states, then whichever parent is seeking to modify the support order must play the "away game" and commence the modification action in the home state of the other parent (§ 611).

Notably, even if the local parent serves the summons commencing the modification action on the out-of-state parent inside her own state—something that normally would give her state jurisdiction over him—her state's courts *may not* modify the existing child support order. The party seeking to modify the support order *must* seek the modification in the other party's home state.

Requiring the parent seeking modification to always litigate in the other parent's jurisdiction has certain societal advantages. Parents who previously avoided visiting their children for fear of being served in the other parent's home state and being subjected to less favorable laws can now exercise their visitation rights knowing that they are immune

from support modification actions during their visit there. Moreover, because evidence of the payor parent's earnings and earning ability is more readily available in the payor parent's locale, it makes sense to prefer that venue for modification proceedings, and the payee parent is better served by filing the modification petition there. Finally, parties are never under pressure to rush to file suit first in order to obtain a "home court" advantage.

The Act grants equivalent immunity to the custodial parent as it does to the payor parent. Just as the Act immunizes the noncustodial parent who enters the jurisdiction to exercise visitation from being sued for additional support, the Act immunizes the custodial parent who commences a modification petition in the noncustodial parent's home-state jurisdiction from having the custody or visitation arrangements challenged there. Specifically, the Act provides that commencing a modification petition in the payor parent's home jurisdiction *does not* permit the payor parent to counter with a challenge to the custody or visitation arrangements there (§ 104(b)(2)). That is, a parent who commences a support enforcement or modification action in the courts of the payor's venue—availing themselves of the courts of that jurisdiction, something that in any other circumstance would make the custodial parent subject to suit there—need not fear that the payor parent will use that as a basis to seek the modification of the custodial or visitation arrangements (§ 104(b)(2)). The Act more broadly grants child support plaintiffs general immunity from other suits while they are in the state to participate in the support proceedings (§ 314(a)).

Once all the parties have moved out of the jurisdiction that issued the original controlling order, the parties need not return to that jurisdiction to terminate its continuing exclusive jurisdiction. A court in the proper jurisdiction for a modification petition may itself determine that neither party nor the child continues to reside in the original jurisdiction and that the original jurisdiction no longer has continuing exclusive jurisdiction (§ 611(a)). As a result, it is not "up to" the original jurisdiction to permit or deny the transfer of jurisdiction.

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The only exception to the "play away" rule is where the non-resident parent agrees to submit to the jurisdiction where the child or other parent lives (§ 611(a)(2)).

SPOUSAL SUPPORT ORDERS

The different rules outlined above concerning modifications of prior orders apply only to child support orders. Spousal support orders that are properly issued in one state remain effective throughout the lifetime of the support order and can be modified only in that state (§ 211). No other state may modify the order, although another state's courts may be called on to help enforce it (*id.*).

THE NON-MODIFIABLE TERMS OF AN INITIAL SUPPORT ORDER

Even when a second forum can modify a prior child support order, the new forum is restricted from modifying any term that could not be modified in the original jurisdiction, such as the duration of the support obligation (§ 611(c)). So, once an obligor satisfies the original support order, another state may not impose a further obligation (§ 611(d)). A state that generally requires child support until a child is older than required in the original issuing state cannot issue a supplemental support order after the child reaches the support-termination age of the first-issuing state. Likewise, a state with an earlier child support cutoff date cannot refuse to enforce a longer-lasting support order (§ 604(a)(1)).

WHEN CUSTODY CHANGES

With the Act, there is an important new consideration when there is a change in custody.

Pre-UIFSA, whenever custody was transferred from one parent to the other, the parents might have had their local court issue a new custody and support order. Under UIFSA, however, the court that has jurisdiction to modify the custody arrangements might not have jurisdiction to modify the child support order (*see* § 102(17), cmt.). It is therefore important to ensure that the existing child support order is modified in the court that has jurisdiction to do so (§§ 611, 613) or to file a formal consent in the court of the issuing jurisdiction to allow this new court to modify the order (§ 611(a)(2)).

NATIONAL RECOGNITION OF INCOME DEDUCTION ORDER

An important warning for the brave among us who generally pay no heed to out-of-state process in the certain comfort that a foreign jurisdiction could not possibly affect us as we are safely ensconced in our comfortable home jurisdictions: After UIFSA there is significant danger to applying this mindset in the context of out-of-state support collection notices.

UIFSA permits the issuance of an income-withholding order to an obligor's employer *without first filing any petition or pleading in the local jurisdiction* (§ 501). Moreover, mere "notice" is sufficient, and no formal "service" is required. If the notice is "regular on its face," the notice *must be honored and treated as if it were issued by a tribunal of the obligor's state* (§ 502(b)). An employer must then withhold and remit the funds as instructed in the income-withholding order (§ 502(c)) or face consequences.

This permits, say, the support recipient's lawyer in another state to issue its own withholding order to the payor's employer by regular first-class mail, facsimile, or even, presumably, email (*see* § 501 cmt.). An employer's failure to thereafter comply with such a notice makes *the employer* subject to all the penalties local law imposes on non-compliance with a valid child support deduction order. In New York, for example, in addition to the employer being liable for the funds it failed to withhold, the employer could incur a civil penalty of $500 for the first failure to make the withholding and $1,000 for each later failure (NY CPLR § 5241(g)(2)(A), (D)). Thus, any notification for the withholding of support from a parent's income should be carefully considered, even if it's in letter form from an out-of-state attorney. There could be substantial costs in ignoring it, even if it does not contain the imprimaturs of enforceability lawyers are typically used to.

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This provision alone is reported to have substantially increased collection of child support for custodial parents. Section 319's comment notes that more than two-thirds of all child support payments are made through such out-of-state notices to the payor's employers. Practitioners must, therefore, be wary when a seemingly innocuous demand from an out-of-state lawyer arrives at an employer's office.

LIMITED ENFORCEMENT DEFENSES

A payor against whom an income deduction order has been issued has only limited defenses. The payor cannot contest the legitimacy of the amount ordered. Generally, the only viable defense is a "mistake of fact" (UIFSA § 506 cmt., 42 U.S.C. § 666(b)(4)(A)), which includes a claim of mistaken identity of the alleged obligor or errors in the amount of current or accrued support owed (*id.*). Defenses that the amount owed is inappropriate or that the payor's financial circumstances have changed cannot be raised in an enforcement proceeding, nor can the denial of visitation by the custodial parent. The latter must be raised in a custody/visitation proceeding under the UCCJEA, and not in a UIFSA proceeding (*id.*).

If the obligor does have one of the valid defenses to the income-withholding order, the payor must register the underlying support order in the local state (§ 506(a)) and give notice of the challenge to the employer(s), the support enforcement agency, and the person designated to receive the payments (§ 506(b)).

WHICH LAW DOES THE LOCAL COURT APPLY?

With the involvement of "initiating" and "responding" tribunals, a reader may wonder which forum's laws and procedures will control the UIFSA support case and its outcome.

Even when a case is an interstate one, UIFSA never requires a local court to apply another jurisdiction's laws. Instead, a "responding tribunal" always applies its own home state's laws and procedures, even to calculate interest on past-due support obligation (§ 604(c)). Aside from the non-modifiable aspects of the initial support order, courts always remain within their comfort zone, applying the procedures and rules they are accustomed to.

FOREIGN SUPPORT ORDERS

When dealing with support orders from foreign countries, the Act distinguishes among them based on whether they have similar child support enforcement mechanisms (§ 102(5)). If the foreign country (1) is declared to be a reciprocating country, (2) has arranged a

reciprocal agreement with your state, (3) enacted laws substantially similar to UIFSA, or (4) is a signatory to the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (concluded at The Hague, Nov. 23, 2007), then the support orders will be recognized and enforced under the Act. Even if the foreign country does not fall within any of these categories, a court can still give effect to the foreign decree under the traditional notion of comity (*see* § 102(5) cmt., *citing* § 104).

RELATED SOURCES OF AUTHORITY

Practitioners working with UIFSA should remain mindful of the various treaties, conventions, and federal statutes that support and interplay with UIFSA.

Because child support orders are always subject to modification in the original jurisdiction, they are never quite "final," and, therefore, under a strict construction of the U.S. Constitution, they might not be entitled to its requirement that sister states give it "Full Faith and Credit." Congress, therefore, enacted the Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B), requiring such interstate respect and enforcement.

The different legal standards of various countries posed additional challenges to the drafters. For example, under French law, so long as a child resides in that country, its local courts have jurisdiction over an absent parent. That standard, however, does not necessarily comply with our constitutional requirement that there be sufficient contact between the jurisdiction and the parent from whom support is sought (*Kulko v. Superior Court*, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978)). The drafters of UIFSA dealt with this issue by allowing a court reviewing a foreign support order to determine whether the court issuing that order had personal jurisdiction substantially in conformity with the Act's section 201 and to use that as a basis to determine whether to recognize the order.

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The United States will also make a reservation to article 20 of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance to allow such a review to determine enforceability.

THE DIFFERENCES BETWEEN UIFSA AND THE UCCJEA

Anyone familiar with the UCCJEA will feel at home with UIFSA. They are both patterned in a comprehensive, homogenous manner, designed so that there can be only one operative order at a time and so that everyone knows which court has jurisdiction to modify a prior order. However, while the UCCJEA depends on the "home state" of the child, the touchstone of UIFSA is the "play away" rule described above.

These different foundational underpinnings create differences in the application of the two bodies of law. If parents return to the state that issued the original decree, that state *would not* regain its "continuing, exclusive jurisdiction" under the UCCJEA (UCCJEA § 202), while under UIFSA the state could then modify its prior order (UIFSA, §§ 205, 611 cmt.). While under the UCCJEA the court with continuing, exclusive jurisdiction may "decline jurisdiction" and create a vacuum that allows another state to assert "vacuum jurisdiction," no analog to that exists in UIFSA (*id.*). Once a support order is validly issued, it remains in effect until it is modified by a proper court, and the original court cannot retain or decline further jurisdiction (*id.*). This all is controlled by the rules.

CONCLUSION

UIFSA, like its analog the UCCJEA, brings order to an area that was previously chaotic and uncertain. Though these bodies require some study to master, the benefits, security, and predictability they provide parents and their attorneys are well worth the effort. ■

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