UIFSA and the Evolving Nature of Continuing, Exclusive Jurisdiction

by Robert H. Siegel

The provisions of the Uniform Interstate Family Support Act (UIFSA)[1] can often seem difficult to navigate. Despite the substantial length of the statute, and its multitude of provisions and subsections, there remain enormous gaps in the enforcement and practical use of UIFSA. This article shall examine the practical and strategic implications of enforcing an out-of-state support order in the state of New Jersey. With enforcement of any order under UIFSA, a host of related issues arise that must be reconciled with the vague language of the statute itself.

UIFSA originated as a uniform act drafted by the National Conference of Commissions on Uniform State Laws.[2] In 1996, the federal government enacted the Personal Responsibility and Work Opportunity Act,[3] which required every state to adopt UIFSA by 1998 in order to continue to receive federal funding for child support enforcement. UIFSA was enacted in New Jersey on March 5, 1998.[4] Its intended goal was to provide for uniform enforcement of support orders by establishing continuing, exclusive jurisdiction over interstate child support orders.[5] UIFSA also standardized how courts across the country implement child support orders.

N.J.S.A. 2A:4-30.72(a) states:

> A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order: (1) as long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued or (2) until all of the parties who are individuals have filed written consents with the tribunal of this State for the tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

When a state transfers continuing, exclusive jurisdiction to another state, it is said to have "relinquished" jurisdiction over the matter. With more litigants moving from state to state after their divorce, issues are becoming more prevalent surrounding the exact nature of *what* the originating states are actually relinquishing when jurisdiction is transferred.

Despite the text of N.J.S.A. 2A:30.72(a), significant steps must be taken in order to enforce an out-of-state support order that have never been clarified by statute or New Jersey case law. First, the out-of-state support order must be registered. N.J.S.A. 2A:4-30.105, titled "Procedure for registration," states:

> A support order or income-withholding order of another state may be registered in this State by sending the following documents and information to the appropriate tribunal in this State:
> (1) a letter of transmittal to the tribunal requesting registration and enforcement;
> (2) two copies, including one certified copy, of all orders to be registered, including any modification of an order;
> (3) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
> (4) the name of the obligor and, if known:
> a. the obligor's address and social security number;
> b. the name and address of the obligor's employer and any other source of income of the obligor; and
> c. a description and the location of property of the obligor in this State not exempt from execution; and
> (5) the name and address of the obligee and, if applicable, the agency or person to whom support payment are to be remitted.
> b. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment,

together with one copy of the documents and information, regardless of their form.

c. A complaint, petition or comparable pleading seeking a remedy that must be affirmatively sought under other laws of this State may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

Absent registration, New Jersey courts will neither enforce nor modify an out-of-state support order.[6] Registration is normally a straightforward process, as the Family Division in each county is adept at registering foreign (out-of-state) divorce judgments. The modification of foreign judgments once they are registered, however, presents complicated issues that are in need of clarification, either by the Legislature or the courts.

The Modification of Out-of-State Child Support Orders

The enforcement of an out-of-state order has not presented New Jersey courts with significant difficulties. The issue of modification of an out-of-state order, however, has proved to be a source of great confusion for New Jersey courts. As explained further below, case law has not clarified the crucial question of how, and to what extent, New Jersey courts have the discretion to modify the provisions of out-of-state divorce decrees. Without greater guidance from the courts, both litigants and attorneys are severely disadvantaged as they seek redress under appropriate circumstances.

N.J.S.A. 2A:4-30.114 addresses the modification of an out-of-state order once it has been registered. It states:

> After a child support order issued in another state has been registered in this State, the registering tribunal of this State may modify that order only if section 52 of this act does not apply[7] and after notice and hearing it finds that:
>
> (1) the following requirements are met:
>
> a. the child, the individual obligee, and the obligor do not reside in the issuing state;
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> b. a petitioner who is a nonresident of this State seeks modification; and
>
> c. the respondent is subject to the personal jurisdiction of the tribunal of this State;
>
> ***or***
>
> (2) the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this State and all of the individual parties have filed written consents in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction which has not enacted a law or established procedures essentially similar to the procedures under this act, the consent otherwise required of an individual party residing in this State is not required for the tribunal to assume jurisdiction to modify the child support order.
>
> b. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State and the order may be enforced and satisfied in the same manner.
>
> c. A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and shall be recognized under the provisions of section 10 of this act establishes the unmodifiable aspects of the support order.
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> d. On issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

Long-Arm Jurisdiction and the Origins of N.J.S.A. 2A:4-30.114(c)

Having set forth the modification provision of UIFSA above, it is important to detail the process by

which New Jersey courts have arrived at their current (though, this author believes, flawed) understanding of how to enforce UIFSA in a uniform fashion across the state. As set forth below, the courts initially attempted to utilize the principle of long-arm jurisdiction to subject out-of-state litigants to New Jersey law. UIFSA was amended in 2001, ostensibly to protect out-of-state litigants from being dragged into the home state courts of their respective former spouses. However, due to the ambiguous and contradictory wording of N.J.S.A. 2A:4-30.114(c) (the amendment to UIFSA), the courts were unable to apply a uniform approach to UIFSA modification cases. The resulting patchwork approach has done little to instill confidence in those seeking to enforce and modify out-of-state orders, creating more confusion than clarity.

In *Sharp v. Sharp*,[8] relying on N.J.S.A. 2A:4-30.68, the trial court held that New Jersey could exercise personal jurisdiction over the father despite the fact that all prior child support orders had been issued by California courts.[9] The Appellate Division reversed, holding that the trial court did not have personal jurisdiction over the father, and that the mother's reliance on a choice-of-law rationale was misplaced.[10]

The *Sharp* decision is critical for two reasons. First, it ended the ability to make choice-of-law arguments in support of the position that New Jersey could assume continuing, exclusive jurisdiction to modify support issues based on public policy concerns. As such, New Jersey's liberal child support laws could not be used to form the basis of an argument that a parent could be compelled to pay an extended form of child support, such as college expenses, that other states did not require.

Second, it illustrated why UIFSA was in need of amendment to prevent the use of long-arm jurisdiction to compel out-of-state litigants to address modification matters in New Jersey.

UIFSA was ultimately amended in 2001 with the addition of N.J.S.A. 2A:4-30.114(c). This amendment limited the ability of the courts of New Jersey to modify "any aspect of a child support order that may not be modified under the law of the issuing state."[11] The practical effect of the amendment was to instruct New Jersey courts that New Jersey law could *not* be applied to cases originating in states with strict cut-off dates for child support. For example, where divorce agreements are entered in states such as Pennsylvania, Maryland, and Florida, where child support automatically terminates upon the child attaining the age of 18,[12] New Jersey's support laws cannot supersede the laws of foreign states. Even where a party to a divorce litigation has been residing in New Jersey for 10 years or more, New Jersey child support laws will not be applied in place of the strict cut-off laws of foreign states where the divorce was entered.[13]

UIFSA was also amended in 2001 with the addition of Section 611(d),[14] which states, "In a proceeding to modify a child support order, the law of the State that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this State."[15]

In 2007, the Appellate Division addressed this amendment in *Marshak v. Weser*.[16] *Marshak* has become the seminal New Jersey UIFSA case by default. However, rather than clarifying the modification provisions of UIFSA, *Marshak* has led to further confusion and ambiguity, primarily due to the unique factual circumstances of the case.

In *Marshak*, the parties were divorced in June 1999 in Pennsylvania, with the initial child support order entered in Pennsylvania as part of the parties' divorce agreement.[17] After their divorce, the parties moved to New Jersey, but a second child support order was entered in Pennsylvania in 2000.[18] On June 12, 2002, the parties entered into a consent order in New Jersey recalculating child support for their younger child in anticipation of their older child's emancipation.[19]

The parties' consent order stated, "Nothing herein shall be construed to affect the nature, term, duration or extent of child support *under the laws of the State of Pennsylvania*."[20] On June 21, 2002, the Pennsylvania court issued an order emancipating the older child when he reached the age of 18.[21]

When the parties' younger child turned 18 and graduated from high school, the father filed a motion in New Jersey to emancipate him.[22] The mother opposed the motion and sought to compel the father to contribute to the child's college expenses under New Jersey law.[23]

Relying on the Appellate Division's decision in *Philipp v. Stahl*,[24] the trial court in *Marshak* held that New Jersey law should be applied on the issue of college expenses, as long as both parties were residing in New Jersey.[25] The Appellate Division reversed the trial court,

holding that since Pennsylvania law did not require parents to contribute to college expenses, the initial Pennsylvania child support order could not be modified to require the father to contribute to college expenses.[26] The *Marshak* court noted the amendment to UIFSA codified at Section 611(d), stating that New Jersey could not extend the father's child support obligation beyond what he was required to pay under Pennsylvania law, where the initial order was entered.[27]

The *Marshak* decision has been heavily relied on. This reliance has been problematic, however, due to the facts of the case, which do not lend themselves to an easy application with respect to future matters. Specifically, in *Marshak*, despite the fact that both parties relocated from Pennsylvania to New Jersey after they were divorced, they entered into a consent order explicitly stating that Pennsylvania's child support laws *would continue to apply notwithstanding their new residency in New Jersey*. By doing this, the parties in *Marshak* essentially memorialized the terms of N.J.S.A. 2A:4-30.114(c) in their consent order. This made it certain that New Jersey's more liberal child support laws would never apply to their case. Once the parties in *Marshak* consented to the application of Pennsylvania law moving forward, they eliminated any need for a discussion of UIFSA's continuing, exclusive jurisdiction statute or its modification provisions. This fact is often overlooked when analyzing *Marshak*.[28]

While no published cases have expressly overruled *Marshak*, the Appellate Division demonstrated a desire to move beyond its limitations in an unpublished 2008 decision. In *Kacmarcik v. Kacmarcik*,[29] the Appellate Division upheld the trial court's decision, which denied the father's motion to emancipate the parties' 19-year-old son, with the appellate court stating that the father was attempting to "forum shop" to obtain a favorable outcome.

The parties in *Kacmarcik* were married in New Jersey in 1987, moved to Pennsylvania in 1990, and were divorced in Pennsylvania in April 1994.[30] The parties' separation agreement, entered into in Pennsylvania, stated that their son would be emancipated upon the "attainment of the age of 18 years…or completion of high school education, whichever event first occurs, but no event beyond the normal date of graduation from high school of the class of the child."[31]

The parties entered into an amended separation agreement in 1998, which addressed custody, child support, medical insurance, and school tuition.[32] It also stated, "This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey."[33]

In May 2006, the mother filed a motion seeking for the father to provide increased child support and contribute toward the child's college expenses.[34] At that time, the parties' Pennsylvania divorce decree, separation agreement, and amended separation agreement were docketed and registered in New Jersey.[35]

The parties initially entered into a consent order that provided that the father would pay one-third of the cost of his son's college expenses.[36] In 2007, after obtaining new counsel, the father ceased making college tuition payments and moved to emancipate the parties' son.[37] Relying on *Marshak*, the father argued that the parties' amended separation agreement changed custody and established a new child support obligation, but did not change jurisdiction.[38]

The trial judge in *Kacmarcik* held that "New Jersey should exercise continuing and exclusive jurisdiction over the parties' disputes arising with respect to custody and child support."[39] The trial court also distinguished the case from *Marshak*, noting that the parties in *Marshak* had "continued to avail themselves of Pennsylvania courts and law for modification of child support."[40] The trial judge specifically noted the parties' June 2002 consent order in *Marshak*, noting how it set that case apart from the facts in *Kacmarcik*.[41] Finally, the trial court stated it believed the father was attempting to "forum shop" in order to take advantage of Pennsylvania law that did not require him to contribute to his children's college expenses.[42]

The Appellate Division affirmed the trial court's ruling, holding that the parties' August 1998 amended separation agreement constituted the necessary written consent under N.J.S.A. 2A:4-30.114(2) to allow New Jersey to modify the child support order, originally entered in Pennsylvania.[43] Though the consent order in *Kacmarcik* gave the Appellate Division a clear basis for their decision, they expressly noted the trial court's concern for forum shopping, providing tacit approval for such an argument.[44]

Kacmarcik suggests that New Jersey courts may have started to realize that the true concern for forum shopping exists not with those who seek to enforce and/or modify out-of-state divorce agreements in New Jersey, but instead, with parties who deliberately move to states where they seek the safe haven of lax child support

laws. The author hopes that ideally, *Kacmarcik* will serve as the intellectual foundation for future cases where an out-of-state litigant attempts to avoid financial obligations by using UIFSA as a shield. New Jersey courts can signal a new approach to the modification provision of UIFSA by expounding upon the *Kacmarcik* holding in a clear and forceful manner.

The practical effects of N.J.S.A. 2A:4-30.114(1)(b) have not been those that were originally intended. Rather than preventing litigants from moving to states with more liberal child support laws, the author believes, they have merely protected those seeking to avoid paying much-needed support to their children.

Developing Case Law and the Consent Provision of UIFSA

As previously noted, N.J.S.A. 2A:4-30.72(a)(1) states that New Jersey maintains continuing, exclusive jurisdiction over support matters as long as the obligor, obligee, or child(ren) continue to reside in the original state. Pursuant to N.J.S.A. 2A:4-30.72(a)(2), New Jersey (and any other state) relinquishes its continuing, exclusive jurisdiction where the parties to the action file written consents to transfer continuing, exclusive jurisdiction to another state to modify all support orders.

However, once a state relinquishes its continuing, exclusive jurisdiction under N.J.S.A. 2A:4-30.72(a)(1) or (2), a 'legal limbo' is created, as the state that assumes jurisdiction often does not know whether they have the discretion to modify, or merely enforce, the original order. While New Jersey has lagged behind in its recognition of the inherent flaws in the design of UIFSA, other states have attempted to interpret the statute in a precedent-setting manner.

For example, in *Basileh v. Alghusain*, the Indiana Supreme Court addressed the issue of whether a state can relinquish its continuing, exclusive jurisdiction by virtue of the fact that no parties involved continue to reside in the original divorce state, without the parties having consented to a transfer of jurisdiction to another state.[45] Basing its ruling on similar cases in Arizona,[46] Oklahoma,[47] Delaware,[48] and Kansas,[49] the Indiana Supreme Court held that only one of the two conditions set forth in I.C. §31-18-2-5(a) (identical to N.J.S.A. 2A:4-30.72(a)) must be met in order for a court to relinquish its continuing, exclusive jurisdiction. Indiana's version of UIFSA, just like New Jersey's, states that Indiana retains continuing, exclusive jurisdiction if a party or related child remains in Indiana, *or* until each party has filed written consent to transfer jurisdiction elsewhere. The Indiana Supreme Court held that if *either* condition is met, Indiana loses its continuing, exclusive jurisdiction, and the new state vested with jurisdiction is permitted to enforce *and* modify the initial Indiana divorce decree.[50]

While New Jersey has enforced the terms of N.J.S.A. 2A:4-30.72(a) without ambiguity regarding the "either/or" language within the statute, the courts have not yet provided the clarity other states are trying to provide with respect to assuming jurisdiction over support matters. The author believes that where no parties reside in the original divorce state, New Jersey should not hesitate to assume continuing, exclusive jurisdiction over support matters; jurisdictional limbo should be avoided for residents of the state of New Jersey simply exercising their rights to child support, in any form.

Additionally, when parties expressly consent to transfer jurisdiction to New Jersey, meeting the requirements of *both* N.J.S.A. 2A:4-30.72(a)(2) and N.J.S.A. 2A:4-30.114(a)(2), the author believes New Jersey courts should have the discretion to modify support outside the scope of the originating state's child support laws.

New Jersey Cases Have Addressed What Constitutes Consent, but Have Failed to Explain Its Ramifications

Though the legal impact of consenting to a transfer of continuing, exclusive jurisdiction has been clouded by New Jersey case law, the courts have outlined the parameters of what constitutes written consent under UIFSA. In *Teare v. Bromley*,[51] the Burlington County trial court emphasized that there is a "strict requirement for the entry of written consent."

In *Peace v. Peace*,[52] the Atlantic County trial court held that consent to allow a subsequent court to modify an original state's child support order should be found "only upon a clear showing that the parties knowingly and voluntarily desired that result."

The author believes it is imperative that the courts understand and enforce the written consent provisions of UIFSA so that cases where both parties consent to New Jersey assuming continuing, exclusive jurisdiction can be properly adjudicated. For instance, where both parties provide their written consent to New Jersey assuming continuing, exclusive jurisdiction, New Jersey courts can then set the tone for subsequent cases that may have more ambiguous factual circumstances.

Once New Jersey courts clearly establish the ramifications of submitting to the state's jurisdiction in writing, courts can extend the underlying basis for application of New Jersey law to similar factual scenarios. Before New Jersey can have its own case like *Basileh*, the seminal Indiana case, the implications of the consent provisions of UIFSA need to be clearly demonstrated.

The Chilling Effect of Certain Provisions of UIFSA

The home state provision of UIFSA, codified at N.J.S.A. 2A:4-30.65, states that a child's home state is the "[s]tate in which a child has lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a complaint or comparable pleading for support."

Unless N.J.S.A. 2A:4-30.72(a)(2) and N.J.S.A. 2A:4-30.114 are revised in the spirit of the home state provision of N.J.S.A. 2A:4-30.65, UIFSA could continue to serve as a safe harbor for delinquent payor spouses. As the statute is currently constituted, and as New Jersey courts have interpreted it, a spouse who is owed significant child support from his or her obligor spouse must travel to the obligor spouse's home state to enforce and/or modify a divorce judgment, unless each party has consented to New Jersey assuming continuing, exclusive jurisdiction.

Under the express provisions of N.J.S.A. 2A:4-30.114(b), unless the parties consent to the modification in express written terms, a foreign state divorce agreement cannot be modified unless a "nonresident petitioner" seeks modification, along with meeting the criteria in factors (a) and (c).

Thus, even if a spouse has lived in New Jersey for over 10 years since a divorce was entered in a different state, he or she will have to travel to the new home state of the obligor spouse, no matter how far that state may be from New Jersey, or how briefly that spouse has lived in the new state, in order to seek support. The author believes this scenario punishes litigants who have sought, in good faith, to enforce divorce agreements, and rewards those who have avoided their support responsibilities by moving between states with disregard for the support of their children. The author believes N.J.S.A. 2A:4-30.114(b) has a dangerous, chilling effect on litigants who are seeking a modification of support from their former spouses, but do not have the means to pursue litigation outside New Jersey.

In order for New Jersey to keep pace with other states that are tackling the fundamental deficiencies of UIFSA, the courts should state with specificity the impact of consent between parties to transfer continuing, exclusive jurisdiction. Only the Legislature can amend the statute to implement a home state provision that would allow litigants to modify initial divorce orders once they have resided continuously in New Jersey for a significant period of time.

New Jersey courts can provide much-needed clarification regarding the effects of transferring jurisdiction here where the parties consent to the transfer. The courts can put teeth into a statute that appears to be crumbling under the weight of its own ambiguity.

Once the courts have established a reliable precedent in addressing the simplest UIFSA matters, they will have set the foundation to adjudicate more complex issues, and ultimately keep pace with other precedent-setting states that are proactively addressing UIFSA-related issues, not simply reacting to the inherent complications in the statute. ■

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Endnotes

1. UIFSA is codified at N.J.S.A. 2A:4-30.65 to 30.123.
2. Uniform Interstate Family Support Act 1996, Part 1 U.L.A. Prefatory Notes (1996).
3. 42 U.S.C. § 666.
4. N.J.S.A. 2A:4-30.65 – 30.123.
5. N.J.S.A. 2A:4-30.72(a).
6. N.J.S.A. 2A:4-30.105.
7. N.J.S.A. 2A:4-30.52 was repealed when New Jersey enacted the federal version of UIFSA on March 5, 1998, and is thus no longer applicable.

8. 336 N.J. Super. 492 (App. Div. 2001).
9. *Id.* at 504.
10. *Id.* at 506.
11. N.J.S.A. 2A:4-30.114(c). Additionally, while UIFSA was amended nationwide in 2001, the close chronological proximity to the *Sharp* case in New Jersey should not be ignored.
12. *See* 23 Pa. Cons. Stat. §4327; Md. Code Ann. Article I, §24; Fla. Stat. §743.07.
13. *See* Unif. Interstate Family Support Act §611(d) (2001).
14. *Id.* Section 611(d).
15. Section 611(d) was codified in New Jersey's UIFSA statute as N.J.S.A. 2A:4-30.114(c), which states in pertinent part: "A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state."
16. 390 N.J. Super. 387 (App. Div. 2007).
17. *Id.* at 389.
18. *Id.*
19. *Id.*
20. *Id.* (emphasis added).
21. *Id.*
22. *Id.*
23. *Id.*
24. 344 N.J. Super. 262 (App. Div. 2001).
25. *Id.* at 390.
26. *Id.* at 394.
27. *Id.*
28. The *Marshak* case is the exception, not the rule. In most cases, UIFSA issues arise where neither the obligor, obligee, or child(ren) reside in the original divorce state, or in less frequent instances where the parties have entered into written consents to transfer continuing, exclusive jurisdiction to a different state. Parties rarely, if ever, have the wherewithal and knowledge of the UIFSA statute to expressly note the continued application of the support laws in the particular state in which they were divorced.
29. 2008 N.J. Super. Unpub. LEXIS 1090.
30. *Id.* at 1.
31. *Id.* at 2.
32. *Id.* at 3.
33. *Id.* at 4.
34. *Id.*
35. *Id.*
36. *Id.* at 5.
37. *Id.*
38. *Id.*
39. *Id.* at 6.
40. *Id.* at 7.
41. *Id.*
42. *Id.*
43. *Id.* at 9.
44. *Id.* at 10.
45. *Basileh v. Alghusain*, 890 N.E.2d at 9 (Ind. 2009).
46. *See McHale*, 109 P.3d 89 (Ariz. Ct. App. 2005).
47. *See Etter*, 18 P.3d 1088 (Okla. Civ. App. 2001).
48. *See Linn v. Delaware Child Support Enforcement*, 736 A.2d 954 (Del. 1999).
49. *In re Marriage of Metz*, 69 P.3d 1128 (Kan. Ct. App. 2003).
50. *See Basileh* at 10.
51. 332 N.J. Super. 381, 390 (Ch. Div. 2000).
52. 325 N.J. Super. 122 (Ch. Div. 1999).