The Family Law Review

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The Uniform Interstate Family Support Act:

Ensuring The Effective Enforcement and Modification of Support Orders

by Marvin L. Solomiany, Esq

Introduction

The Uniform Interstate Family Support Act (UIFSA) became effective on Jan. 1, 1998 and is embodied in O.C.G.A. § 19-11-100 to § 19-11-191. UIFSA is applicable when parties live in different states and one party seeks the establishment, enforcement, or modification of child support or alimony. UIFSA also applies to paternity issues. UIFSA has been adopted by every state and supersedes all versions of the Uniform Reciprocal Enforcement of Support Act (URESA).

UIFSA attempts to resolve the problems, which arose under URESA by establishing a defined set of rules, which can be summarized as "One Order, One Time, One Place" so that there is only one controlling order. UIFSA facilitates the enforcement of a child support by including eight additional provisions to assert personal jurisdiction over a non-resident defendant.

O.C.G.A. § 19-11-110. UIFSA also severely limits an enforcing court's ability to modify the underlying child support obligation by only allowing the state which enters the controlling order to retain exclusive continuing jurisdiction to modify said order as long as either one of the parties or a child continues to reside in that state.

In summary, UIFSA clearly establishes which courts have jurisdiction to enforce a support order (which revolves around personal jurisdiction); and the one court that has jurisdiction to modify a support order (which revolves around subject matter jurisdiction). In other words, a support order can be enforced in multiple states, but can only be modified in one state.

The Expansion of Asserting Personal Jurisdiction Under UIFSA

In order to enforce or establish a support order, it is necessary to assert personal jurisdiction over a non-resident defendant. Establishing this connection becomes difficult when one party resides in a different state. UIFSA facilitates asserting personal jurisdiction over a non-resident defendant by supplementing Georgia's Long Arm Domestic Statute. To exercise personal jurisdiction over a nonresident defendant in a case involving support, two statutes may be applied: (1) The Georgia Domestic Relations Long Arm Statute as embodied in O.C.G.A. § 9-10-91 or (2) the UIFSA provisions as embodied in O.C.G.A. § 19-11-110.

Because in many instances Georgia's Domestic Relations Long Arm Statute is not sufficient to assert personal jurisdiction over a non-resident defendant, UIFSA supplements it by providing the following

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Note from the Chair

By Richard M. Nolen.
Warner, Mayouse, Bates, Nolen & Collar, P.C.

We are privileged to have an outstanding Board of Directors in the Family Law Section. All of our Board Members volunteer to do very hard work, and they all serve the section well.

Please take a moment to learn a little about each of the following Board members and thank them for their service to our section:

Tommy Allgood practices in Augusta. He is the immediate past chair of the section, and he did a great job last year.

Steve Steele practices in Marietta. He is the vice-chair/chair-elect of the section and has a great program planned for the 2005 Family Law Institute at Amelia Island.

Shiel Edlin practices in Atlanta. He is the secretary/treasurer of the section and planned a great Family Law Nuts and Bolts held on Nov. 12.

John Lyndon practices in Athens. He is an at-large member of the board. He is very techno-savvy and is one of our section's greatest advocates.

Carol Walker practices in Gainesville. She is an at-large member of the board. She has been instrumental in communicating with the Council of Superior Court Judges on behalf of our section.

Karen Brown Williams practices in Atlanta. She is an at-large member of the board. She is instrumental in bringing a new perspective to the board, and did a great job presenting the case law update at the Institute this year.

Christine Bogart practices in Atlanta. She is an at-large member of the board. She and her husband and partner, Jeff Bogart, have unselfishly given their time and great effort to the section.

Tina Roddenbery practices in Atlanta. She is an at-large member of the board. She is an integral link between the section and the legislature and the State Bar.

Ed Coleman practices in Augusta. Ed is an at-large member of the board, and he has brought great new ideas and enthusiasm to the board.

Kurt Kegel practices in Atlanta. He is the editor of the *Family Law Review*, and he does a great job in coordinating all of the work in this publication.

Please let all of these hard-working lawyers know how much you appreciate their efforts on their behalf. Proud of our section, and proud to be a family lawyer.

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UIFSA

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eight additional provisions to assert personal jurisdiction over a nonresident defendant:

- The individual is personally served with process within Georgia;
- The individual submits to the jurisdiction of Georgia by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- The individual resided with the child in Georgia;
- The individual resided in Georgia and provided prenatal expenses or support for the child;
- The child resides in Georgia as a result of the acts or directives of the individual;
- The individual engaged in sexual intercourse in Georgia and the child may have been conceived by that act or intercourse;
- The individual asserted parentage in the putative father registry maintained in this state by the Department of Human Resources; or
- There is any other basis consistent with the Constitutions of Georgia and the United States for the exercise of personal jurisdiction. O.C.G.A. § 19-11-110.

In short, once a court is able to assert personal jurisdiction over a non-resident defendant, that court can enforce a support order over said party regardless of the state where that individual resides.

To Modify a Support Order Subject Matter Jurisdiction is Required

Asserting personal jurisdiction over a non-resident defendant simply allows a Georgia court to enforce a support order, it does not allow a Georgia court to modify a support order. In order to modify a support order, a court must have both personal and subject matter jurisdiction. Subject matter jurisdiction is directly related in UIFSA to the principle of exclusive continuing jurisdiction.

In short, once a court is able to assert personal jurisdiction over a non-resident defendant, that court can enforce a support order over said party regardless of the state where that individual resides.

Under UIFSA, once a child support order is entered by a state, that state will have exclusive and continuing jurisdiction over that support order as long as one of the parties or child(ren) continue to reside in that state. O.C.G.A. § 19-11-114. Vesting a court with exclusive continuing jurisdiction is perhaps the most important aspect of UIFSA as it "limits the number of duplicate and conflicting support orders, and reduces forum shopping by parents seeking to increase or decrease the amount of child support payments."

Once exclusive continuing jurisdiction is lost (i.e., when both parties and all the children have left the state where the original order was entered), in order for a state to assert subject matter jurisdiction in a modification action, all of the following must be established: (1) none of the parties or children reside in the original state; (2) the petitioning party is not a resident of the state where the modification is brought (the only exception is when both parties are residents of that state); and (3) the Defendant is subject to the personal jurisdiction of that state. O.C.G.A. § 19-11-170. The purpose behind the requirement of not allowing the petitioning party to be a resident of the state where modification is brought is important because it prevents an individual from relocating to another state for a strategic advantage (such as an individual relocating to a state where the duration of the child support is longer).

There is an important difference between the procedure to modify a child support

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Georgia Case Law Update

by Sylvia A. Martin
Sylvia Martin, Attorney at Law

Attorneys' Fees

Gomes v. Gomes, SO4A1475 (Oct 25, 2004)

The parties' settlement agreement settled all issues except attorneys' fees, which issue was reserved for decision by the trial court upon presentation by each party of briefs and oral arguments. After entry of the Final Decree, the wife filed her motion for fees which was denied by the trial court for the sole reason of wife's failure to cite a statute or case law which would authorize such award. The Supreme Court reversed the trial court's order and remanded for consideration of the wife's request for fees, holding that wife was not required under the circumstances of the case to cite any statutory authority. It was clear from the wife's motion that she intended to base her claim for fees upon financial matters and, as a result of such information, that she was seeking fees pursuant to O.C.G.A. § 19-6-2.

Mixon v. Mixon, 278 Ga. 446 (2004)

The parties were divorced after a two-day jury trial at which evidence was presented concerning each party's financial circumstance. The issue of attorneys' fees was reserved by the trial court upon presentation of wife's legal bills. The trial court denied the wife's request for fees, and in its order stated that, upon exercising discretion, and after considering the financial resources, age, physical condition and ability to work of each party, the request was denied. On appeal, the Supreme Court upheld the trial court's order finding that it did not abuse its discretion, and that, contrary to wife's contention on appeal, that the trial court was not required to state in its order the statutory basis for such order. It was clear from the record that O.C.G.A. § 19-6-2 was the statute relied upon by the trial court.

Civil Procedure

Withrow v. Withrow, 603 S.E.2d 276 (Ga. 2004)

This case reminds us that (1) filing a notice of conflict is required by Uniform Superior Court rule 17.1 which sets forth when, how and what such conflicts must provide; and (2) that lawyers are not authorized to determine the order in which cases are to be tried. In this case, the husband's lawyer had filed a notice of conflict, and in it had indicated that the final hearing of this matter was to take precedence over other matters he was handling. No objections by opposing counsel were raised, nor did any judges give different directions. However, the day before the hearing, husband's lawyer called the judge's office and asked that the case be reset due to conflicts. The lawyer never spoke with the judge nor requested a continuance, but the lawyer instructed husband not to appear the next day for the final hearing. The next day, the trial judge called the calendar, neither husband nor his lawyer were present, and the judge instructed his personnel to contact the lawyer to inquire as to his failure to appear. The judge held the case until the afternoon and then conducted the final hearing without the presence of husband or his lawyer. The Supreme Court affirmed the trial court's denial of husband's motion for new trial. The Court held that only the trial judge can reorder the trial calendar; that a lawyer attempting to communicate information to a judge through a third party does so at his and his client's peril; that failure of a lawyer to appear without leave to appear in other courtrooms is no grounds for a continuance; and that the right to effective assistance of counsel does not extend to parties in divorce cases.

Contempt

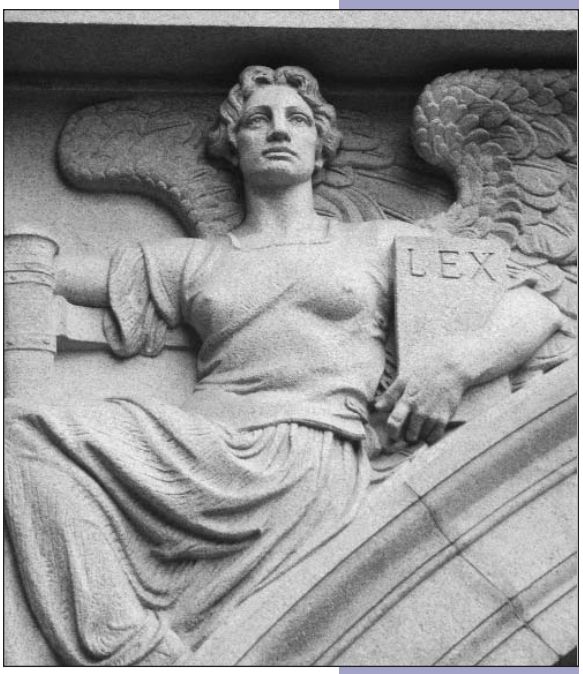
Louradour v. Britt f/k/a Louradour, 278 Ga. 168 (2004)

The parties divorced in 1993. Their decree provided that father would pay child support for the parties' child, provide health insurance, pay some of the uncovered medical expenses and also pay self-executing increases in child support. In 1994, the Georgia DHR filed an action against father for failure to pay some of his support. A consent order was entered, and father paid pursuant to that order. In 2002, the mother filed for contempt alleging that father was in contempt of the 1993 divorce decree. The trial court found that the 1994 order did not modify the 1993 order and found father to be in contempt. On appeal, the Supreme Court found that the 1994 order was a court order rather than an administrative one and as a result, it modified the 1993 order and was the only order in place until modified by future order.

Custody and Child Support

Frank v. Lake, 266 Ga.App. 60 (2004)

In the mother's petition for modification of custody wherein she was asking the court to change custody of the three minor children from the father to her, she alleged that the father frequently used illegal drugs in the children's presence and failed to obtain proper medical treatment for them on several occasions. The mother filed an affidavit of their daughter which stated that the father smoked marijuana in their presence and became abusive and neglectful. At the temporary hearing, the trial judge, with the parties' consent, met with the daughter in chambers. The parties then agreed to enter into a consent temporary order changing custody to the mother. The judge subsequently appointed a *guardian ad litem* for the children. The guardian submitted a report to the court which included many exhibits mostly consisting of the children's medical records. Although the guardian did not recommend a change in custody, the records indicated that the father had failed to obtain proper medical care for the children several times. At the final trial, both parties asked the court to review the guardian's report, and the evidence presented included a showing by the mother that the children had been doing well in her care. The judge found that a material change in circumstances existed that affected the welfare of the children and changed custody. On appeal, the father claimed that the trial judge should not have considered the guardian's report and the daughter's out of court statements. The Court of Appeals noted that both parties had agreed for the court to interview the child and to consider the guardian's report, and held that the trial court has the right to relax the rules of evidence absent objection by the parties to determine the best interests of the children. The father also claimed that there was no substantial change in circumstances justifying a change in custody. The Court of Appeals stated that pursuant to *Bodne*, an initial custody award no longer controls if there is a new and material change in circumstances that affects the welfare of the children, and a trial court cannot apply a bright line test. The Court of Appeals found that the trial court did not abuse its discretion and upheld the change of custody award.



Weickert v. Weickert, 268 Ga.App. 624 (2004)

In its opinion, the Court of Appeals both clarified *Bodne* and provided some practical tips for trial judges.

By way of factual background, the parties had been divorced since 1999, with the mother having physical custody of the three children and the parties sharing legal custody. In 2002, the mother decided to move to California to be near her ailing mother. Later that year the parties filed a joint petition for modification of custody and stated that there had been a substantial change in the circumstances of the parties and the children. The parties agreed that in light of the mother's move, the father would have physical custody of the children during the 2002-03 school year. The court entered an order to that effect, and the order also stated that the parties would revisit the issue in May 2003.

When the parties could not agree on custody at the end of the 2002-03 school year, the court allowed the father to reopen the modification action. A week-long trial took place, and some of the evidence adduced there was that the father had become very involved in the children's lives, that initially the parties successfully coparented the children, that the father had developed a network of friends to help with the children, and that while he had the children during the school year he provided proper care for them. In its final order the trial court stated that the children would do well in both Georgia and California, that the mother's move constituted a change for the worse in the children's condition but that such relocation alone did not warrant a change in custody, but that a change in custody would promote the children's welfare. Thus, the court changed custody to the father. The trial court's order was entered on the same day the Supreme Court decided *Bodne*.

The Court of Appeals considered three issues: (1) whether *Bodne* requires that a finding of material change in circumstances for the worse must be found first before changing custody; (2) whether a finding of material change in circumstances must be made before the court can consider the best interests of the children; and (3) whether the trial court must make an express finding regarding best interests.

Regarding (1) above, the Court of Appeals found that *Bodne* abolished the *prima facie* right of the custodial parent and eliminated the requirement of showing a change for the worse. Thus, a trial court is not required to find a change for the worse in the children's circumstances. Regarding (2) above, the Court of Appeals found that the standard still remains that custody may be changed only if a new a material change in circumstances exists that materially affects the children. Thus, a trial court must find that a material change in circumstances has taken place before it can consider whether the modification of custody is in the children's best interest. Regarding (3), the Court of Appeals did not remand the case for the trial court to use the exact language of *Bodne*; however, the Court of Appeals did indicate that trial judges should use the "magic words" of "material change," and "best interests." Essentially, the Court of Appeals urges trial courts to use the exact language set out in *Bodne* in their orders modifying custody awards.

Lewis v. Lewis, **S04A1563 (Oct 25, 2004)**

The Supreme Court held that the wife did not waive her claim for child support arrearages pursuant to the temporary order by failing to assert such claim at the final trial. At the time of trial, husband was in arrears of child support upwards of $3,000 under the parties' temporary order. The wife failed to raise the arrearage issue at the jury trial but filed a contempt for the temporary child support after entry of the

final decree. The trial court refused to find the husband in contempt on the theory that wife waived any claim she had. The Supreme Court reversed for the above reasons, citing cases that support both the propositions that a jury trial does not affect the provisions of a temporary order, and that the right to child support belongs to the child and cannot be waived by the custodial parent.

Scott-Lasley v. Lasley,
SO4F1012 (Oct 25, 2004)

The wife appealed the final decree of divorce that incorporated portions of the parties' settlement agreement that provided that custody would automatically change in the event one of the parties moved outside the metro Atlanta area; that the husband's child support obligation would reduce by one-thirds as each of the three children reached the age of majority; and that child support did not continue beyond the age of 18. The Supreme Court agreed that the automatic change of custody violates the *Scott v. Scott* decision that prohibits an automatic change of custody, whether entered into by a trial court or incorporated into an agreement. The Supreme Court also agreed that it was error for the trial court to approve of the child support reduction in the agreement. The Court held that the initial award for all three children was within the Guidelines; however, the one-third reduction resulted in child support payments for the remaining children that were below Guideline amounts, and the trial court made no finding of special circumstances that would justify such amounts. The Court also noted that there is no policy reason justifying a departure from the Guidelines for the remaining children, and that at least one other court has held that a trial court cannot reduce child support on a pro rata basis. The Supreme Court upheld that portion of the final decree that terminated child support at the age of eighteen. The Court found that the provision in O.C.G.A. § 19-6-15 which states that child support can continue to the age of 20 if a child is still enrolled in and attending high school is discretionary with the trier of fact and is not an automatic inclusion.

Prenuptial Agreements

Adams v. Adams,
603 S.E.2d 273 (Ga. 2004)

Two days before their marriage, husband and wife entered into a prenuptial agreement. At the time, husband's estate was worth approximately $4.5 million, and wife's assets were valued at $30,000. The prenup provided that in the event of separation, wife would receive $10,000 for every year of marriage up to a cap of $100,000; that wife waived all claims to husband's premarital property; that she waived any claim to a "continued lifestyle;" and forfeited her rights in the event of her committing unforgiven adultery.

Nine years later, wife filed for divorce. Husband moved to enforce the prenup which was granted by the trial court. On appeal, wife did not challenge the trial court's findings in accord with *Scherer v. Scherer*. Instead, wife claimed that the prenup is unconscionable when comparing the financial benefits she is entitled to receive under the prenup with husband's financial status at the time of its execution. The Supreme Court held that the trial court thoroughly considered all the circumstances and that the trial court's order comported with the requirements of *Scherer*. The Court noted that the prenup was not unconscionable because it may have perpetuated the parties' inequitable financial circumstances that existed prior to the marriage. ◊

Trim Down, Lose the Weight

by Randall M. Kessler
Kessler & Schwarz, P.C.

No, this is not a column about a new diet for lawyers. Rather, this month's column is devoted to the aesthetics of our technology. For many reasons, we should pay attention to the aesthetics of our technology devices and equipment as a means to improving our practice (as well as the likelihood of our taking advantage of the tools we have purchased).

When shopping for a laptop or notebook computer, consider purchasing the absolute thinnest and lightest computer available. Every pound taken off the weight of your laptop computer increases the likelihood that on your way out of the office you will say "what that heck, I'll take it just in case." If you carry a seven or eight pound notebook computer, there is that hesitation and dilemma as to whether it is really worth schlepping it and all the attachments to court given that there is only a small likelihood the computer will be used. However, if you purchase the latest Sony Vaio at a weight of only 1.8 pounds, the balancing act tends to shift in favor of "what the heck, it's not that heavy, I'll bring it."

For our purposes, even the lightest, thinnest and smallest notebook computer can likely do what we need it to do, which is basically word processing and, if needed, wireless access to the Internet. It can also be used for all sorts of PowerPoint type presentations and displays. Additionally, the public is becoming more and more computer savvy and when you lug around an eight pound computer, your client may think that you are not on the cutting edge of technology (which may imply that perhaps you are not on the cutting edge of the law). While these analogies may not make factual sense, the impression we want to give to our clients is that we are always seeking to be at the forefront of our profession and that we are willing to invest in the tools necessary to make us more capable of representing them zealously. An eight-pound laptop computer may say to the client that we are not willing to spend our money on tools needed to assist our client (although this may be totally untrue).

There is also a dynamic in the technology world known as the "WOW" effect. This is the effect new electronics and computers have when people see them for the first time. Given the rates lawyers charge, if I were the client I would presume that some of the fee that I am paying is based on their need to stay up to date with global technology to give me every advantage in my case. Along the same lines, an old-fashioned monitor may say to the client that your technology is out of date. Computer savvy clients know that five years ago, every computer purchased came with one of those big monitors. Therefore, rather than updating your entire computer system, if you simply replace some of the old monitors with flat screens, you will again generate the impression to your clients that you are with the times and that your technology has been updated so that you are ahead of, or at least keeping up with, your opponents. Additionally, there is the added benefit that the flat-screen monitors save desk space and make you and your staff more efficient, as well as making you look more organized.

It also does not hurt to have your firm's logo scroll across the monitor as a screen saver and for the same screen saver to be on each computer. This looks more organized and professional than having each lawyer and paralegal use different screen savers. If you look closely at the screen savers currently being used in your office, they may not be the most professional (fish with bubbling noises or frogs croaking?).

This theory of appearing to have the most advanced technology and of conserving weight and space can be extended to all areas of our practice not just technology. Aside from extending to cell phones and handheld devices, the theory applies to our filing systems, to our copy and fax machines, printers, and to the idea of hiding our storage areas, either in a back room or closed closets. As with all of the other articles I have written on this topic, please know these are only my "off the cuff" ideas. If you use them, I hope they work for you and as always I welcome any feedback, responses or different opinions. ♦

UIFSA

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order and alimony order under UIFSA. Under the current version of UIFSA as adopted by Georgia, an alimony obligation can only be modified in the state which issued the original support order even though all of the parties have relocated from that state. See O.C.G.A. § 19-11-115(f). In other words, the state which entered the alimony order will always have exclusive continuing jurisdiction to modify that support order regardless of neither party residing in that state.

Unlike the UCCJEA, where a court having exclusive continuing jurisdiction can release its jurisdiction by finding itself to be an inconvenient forum, under UIFSA the state having exclusive continuing jurisdiction is prohibited from releasing its jurisdiction based on inconvenient forum grounds. In addition, even if a state has jurisdiction over a custody matter pursuant to the UCCJEA, that state will not have jurisdiction to modify a child support order unless it is able to assert both personal and subject matter jurisdiction under UIFSA.

Reconciliation of Multiple Orders: Finding the Controlling Order

When multiple support orders exist, UIFSA provides a mechanism to determine which is the "controlling order." O.C.G.A. § 19-11-116. In situations when two or more support orders have been entered or when multiple states seek to exercise jurisdiction over an order, the following rules apply to determine which is the controlling order: (1) if only one court has exclusive continuing jurisdiction under UIFSA (i.e., when either a party or a child continues to reside in the state that issued the applicable order), the order of that court is the controlling order; (2) if more than one court would have continuing exclusive jurisdiction under UIFSA, the order issued by a tribunal in the current home state of the child is the controlling order (but if an order has not been issued in the current home state of the child, the most recently issued order is the controlling order); and (3) if no court has exclusive continuing jurisdiction under UIFSA, the Georgia court having jurisdiction over the parties (i.e., that court which is able to exercise personal jurisdiction) shall issue a child support order which shall be the controlling order. O.C.G.A. § 19-11-116.

UIFSA promotes the enforcement of a child support obligation by applying the longer statute of limitation between the court enforcing the order or the one court that is able to modify the order (i.e., the court having exclusive continuing jurisdiction).

UIFSA Choice of Law Provisions: You Can Run, But You Cannot Hide

Pursuant to UIFSA, once Georgia has jurisdiction to modify a child support order, it shall apply its child support guidelines to determine the amount of child support. O.C.G.A. § 19-11-122 (2). Notwithstanding, Georgia is prohibited from modifying the non-modifiable terms of the original order (i.e., duration of the child support obligation). The choice of law provisions embodied in UIFSA represent a significant departure from URESA which assumed that the law of the enforcing or modifying state (whichever state had before it the Order) controlled the duration of support. O.C.G.A. § 19-11-49.

Pursuant to O.C.G.A. § 19-11-163 "[t]he law of the issuing state governs the nature, extent, amount and duration of current payments and other obligations of support and the payment of arrearage under the order." In addition, O.C.G.A. § 19-11-170 (c) provides that a Georgia court "may not modify any aspect of a child support order that may not be modified under the law of the issuing state." The meaning of these provisions is that UIFSA prevents the modification of any final, non-modifiable provi-

sion of the original order. The most common non-modifiable provision relates to the termination of a child support obligation.

UIFSA promotes the enforcement of a child support obligation by applying the longer statute of limitation between the court enforcing the order or the one court that is able to modify the order (i.e., the court having exclusive continuing jurisdiction). O.C.G.A. § 19-11-163(b). In Georgia, there is no statute of limitations to recover child support arrearages. See O.C.G.A. § 9-12-60 (d); and *Brown v. Brown*, 269 Ga. 724 (1998).

Procedures To Enforce an Out of State Support Order: Registration

O.C.G.A. § 19-11-161 provides the requirements for registering an order issued by another state. In summary, an out of state support order may be registered in Georgia by including the following information in the applicable motion (i.e., such as a motion for contempt): (1) a letter to the clerk's office requesting registration and enforcement; (2) attaching two copies of all orders to be registered (one which must be certified), including any modification of an order; (3) a sworn statement by the party seeking registration listing the amount of arrearage; (4) the name of the obligor (and if known, that person's address, social security number, obligor's employer, or description and location of property not exempt from execution); and (5) the name and address of the obligee.

Once the applicable motion is filed, the out-of-state support order is deemed registered. Pursuant to O.C.G.A. § 19-11-164, the court must notify the non-registering party (obligor) and the employer (if applicable). The notice must inform the non-registering party of the following: (1) that the out of state order is enforceable in Georgia; (2) that a hearing to contest the Order must be requested within 20 days after notice; (3) the amount of the alleged arrears; and (4) that failure to contest the validity or enforcement of the registered order will result in confirmation of the order and "precludes further contest of that order with respect to any matter that could have been asserted."

Challenging the Enforcement of a Child Support Order

If a party seeks to contest the validity or enforcement of an out of state support order that has been registered in Georgia, the party contesting the Order must request a hearing within 20 days after notice of the registration. O.C.G.A. § 19-11-165(a). "If the non-registering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law." O.C.G.A. § 19-11-165(b).

A contesting party has the burden of proof to contest an out of state support order and can only assert seven defenses to contest the validity or enforcement of a registered order or if he/she seeks the vacation of the registration. O.C.G.A. § 19-11-166(a). The defenses are as follows:

- The issuing tribunal lacked personal jurisdiction over the contesting party;
- The order was obtained by fraud;
- The order has been vacated, suspended or modified by a later order;
- The issuing tribunal has stayed the order pending appeal;
- There is a defense under the law of Georgia to the remedy sought;
- Full or partial payment has been made; or
- The statute of limitation under Code Section 19-11-163 precludes enforcement of some or all of the arrearage.

Apart from the aforementioned seven defenses, there can be no further defenses to contest the registration of an order. If the contesting party does not prevail, the court will issue an order confirming the order and all remedies available can enforce the order under the laws of Georgia. ♦

Additional Sources

Aman, John J., Everything You Wanted to Know About UIFSA But Were Afraid To Ask, BAEC The Bulletin, http://www.eriebar.org/bulletin/may_99/uifsa.html (1999).

Atkinson, Janet and Morgan, Laura W., Oral Presentation on: *The Ins and Outs of UIFSA*, American Bar Association (2001).

Fenton, Major Janet, Alliance for Non-Custodial Parents Rights, *Uniform Interstate Family Support Act Long Arm Statute Interpreted*, http://www.ancpr.org/uifsa.html (visited on February, 2002).

Kemper, Kurtis A., *Construction and Application of Uniform Interstate Family Support Act*, 90 A.L.R. 5th 1 (2001).

Muskin, Charles J., *Uniform Interstate Family Support Act*, 35 FEB Md. B.J. 54 (2002).

Johnson, Jaimie, *Alimony and Child Support Generally*; 14 Ga.St.U.L. Rev. 121 (1997).

Atkinson, Janet and Morgan, Laura W., *The Ins and Outs of UIFSA*, American Bar Association (2001).

Atkinson and Morgan, supra at 21.

The 1996 version of UIFSA, which is the version adopted by Georgia, has been amended by the 2001 version of UIFSA. Pursuant to the 2001 version of UIFSA, the general rules concerning modification of a child support order also apply to the modification of an alimony order (i.e., a state has to be able to assert both personal and subject matter jurisdiction to modify the alimony order). Nonetheless, only a limited number of states, which do not include Georgia, have adopted the 2001 version of UIFSA. The 2001 version of UIFSA (including the official comments) can be found at http://www.law.upenn.edu/bll/ulc/uifsa/final2001.htm.

For an analysis of case law addressing this issue, see Atkinson and Morgan, supra at 21-22.

Save the Date!

2005 Family Law Institute

May 25-29, 2005

Ritz-Carlton, Amelia Island, Fla.

The Editor's Corner

by Kurt A. Kegel
Davis, Matthews & Quigley P.C.

With the holidays now upon us, I want to take a minute to thank everyone who has helped make the *Family Law Review* possible by contributing their ideas, efforts, time and articles. Without the efforts of everyone involved, it would not be possible for us to keep this newsletter coming and to keep all the information at your disposal. I hope everyone has enjoyed a great 2004 and is looking forward to 2005.

As you will notice, in each issue of the newsletter, I try to include at lease one "lead article," addressing an issue that is of particular importance to us. Again, I appreciate the time and effort involved in preparing an article for publication. Unfortunately, the task of compiling articles for publication continues to be difficult. For those of you out there who read this newsletter and ask, "I wonder why they never talk about _____," don't be afraid. E-mail me your article and chances are, you will see it published.

Thank you for a great year. Here is hoping 2005 is even better! ♦

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