

Comment,
JURISDICTIONAL ISSUES UNDER THE
UNIFORM INTERSTATE FAMILY
SUPPORT ACT

I. Introduction

The Uniform Interstate Family Support Act (hereinafter "UIFSA") was drafted by the National Conference of Commissions on Uniform State Laws.¹ The purpose of the Act is to expedite interstate and intrastate proceedings involving child support or spousal support.² Initially the Conference was solely going to review and make limited changes to the Uniform Reciprocal Enforcement of Support Act (hereinafter "URESAs") and the Revised Uniform Reciprocal Enforcement of Support Act (hereinafter "RURESAs"). However, the Drafting Committee eventually came to the conclusion that the RURESAs needed extensive changes. The committee decided to draft a new act call UIFSA. UIFSA was initially approved in 1992 by the Uniform Law Conference and then ratified by the American Bar Association in 1993.³ As UIFSA was implemented by child support enforcement agencies many questions regarding the act arose, so the committee made several amendments that were then adopted in 1996.

UIFSA governs several proceedings: the establishment of an order for spousal support or child support;⁴ the enforcement of a support order;⁵ the registration of an order for spousal support or child support;⁶ the modification of a child support order or spousal support order;⁷ the registration of a child support or spousal support order;⁸ the determination of parentage;⁹ and the

¹ Uniform Interstate Family Support Act 1996, (hereinafter UIFSA), Part 1 U.L.A. Prefatory Notes (1996).

² *Cowan v. Moreno*, 903 S.W.2d 119, 121 (Tex.App.-Austin, 1995).

³ UIFSA, *supra* note 1, at Prefatory Notes.

⁴ *Id.* at § 301(b)(1).

⁵ *Id.* at § 301(b)(2).

⁶ *Id.* at § 301(b)(3).

⁷ *Id.* at § 301(b)(4).

⁸ UIFSA, at § 301(b)(5).

⁹ *Id.* at § 301(b)(6).

244 *Journal of the American Academy of Matrimonial Lawyers*

assertion of jurisdiction over nonresidents.¹⁰ UIFSA describes the role of the state that originally issues a support order, as well as the role of the state in which enforcement and/or modification are sought.¹¹

Although UIFSA(1996) supersedes UIFSA(1992)and RURESA, they all had the common goal of enforcing interstate support obligations on a national level.¹² RURESA was an attempt to correct the problems of URESA and a further attempt to accomplish the goal of enforcing interstate support obligations on a national level. However, problems became apparent upon its implementation.¹³ Under RURESA multiple support orders were allowed.¹⁴ Often these orders were conflicting and made it difficult to calculate arrearages and enforce child support orders.¹⁵ Therefore another of UIFSA's major goals is to eliminate multiple orders.¹⁶

Thirty-three states and the District of Columbia adopted UIFSA by 1996.¹⁷ Shortly after the adoption of UIFSA, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter "PRWORA").¹⁸ The PRWORA mandated states to adopt UIFSA "in order for a state to remain eligible for the federal funding of child support enforcement."¹⁹ Therefore, the majority of states adopted

¹⁰ *Id.* at § 301(b)(7).

¹¹ *Cowan v. Moreno*, 903 S.W.2d 119, 121 (Tex.App.-Austin, 1995).

¹² David H. Levy & Cecilia A. Hynes, *Highlights of the Uniform Interstate Family Support Act*, 83 ILL. B.J. 647 (1995).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Levy & Hynes, *supra* note 12, at 647; see also Patricia Wick Hatamyar, *Critical Applications and Proposals for Improvement of the Uniform Interstate: Family Support Act and the Full Faith and Credit for Child Support Orders Act*, 71 ST. JOHN'S L. REV. 1, 6 n. 14 (1997).

¹⁶ UIFSA, *supra* note 1, Prefatory Note.

¹⁷ *Id.*

¹⁸ 42 U.S.C.A. sec. 604(a)(1999).

¹⁹ UIFSA, *supra* note 1, at Prefatory Note; see also 42 U.S.C. § 666(f) "Uniform Interstate Family Support Act — In order to satisfy sec. 654(20)(A), on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date, by the National Conference of Commissioners of Uniform Laws."

UIFSA.²⁰

The wide acceptance of UIFSA has brought about many new issues. This article initially addresses the jurisdictional issues that have arisen since the 1996 enactment of UIFSA. Part II of this article discusses the general jurisdictional provisions of UIFSA. Part III addresses competing petitions for support orders. Part IV defines the provisions of jurisdiction regarding spousal support orders. Finally, Part V explains the jurisdictional issues that arise in child support orders.

II. General Jurisdictional Provisions of UIFSA

The general jurisdictional provisions are laid out in UIFSA sections 201, 202 and 205. UIFSA, unlike URESA, does not allow multiple orders to be recognized. The emphasis is on “one order at a time.”²¹ To achieve this result section 205 incorporates continuing, exclusive jurisdiction. “[T]he principle of continuing, exclusive jurisdiction aims, so far as possible, to recognize that only one valid support order may be effective at any one time.”²² That is to say that

only one state’s order should govern, at any given time, an obligor’s support obligation to any particular obligee or child. Only one state should have continuing jurisdiction to modify that order, and all other states should give that one order full faith and credit and refrain from modifying it, unless the first state no longer has jurisdiction.²³

Helpful in accomplishing this goal is UIFSA’s broad provision of long arm jurisdiction, which allows all states to have long-arm jurisdiction.²⁴ This broad provision allows “the obligee’s home state the best opportunity to secure personal jurisdiction over the absent obligor.”²⁵ Sections 201 and 202 provide for this long-arm jurisdiction to obtain personal jurisdiction over a non-resident respondent.²⁶ The drafters of UIFSA chose to base

²⁰ UIFSA, *supra* note 1, General Notes.

²¹ See UIFSA, *supra* note 1, Prefatory Note; see

²² UIFSA, *supra* note 1, Prefatory Note; see § 201.

²³ See Hatamyar, *supra* note 15, at 4-5; see also The Full Faith and Credit Clause, U.S. CONST. art. IV, § 1.

²⁴ Paul K. Legler, *The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act*, 30 FAM. L.Q. 519 (1996).

²⁵ See Levy & Hynes, *supra* note 12, at 647.

²⁶ UIFSA, *supra* note 1, § 201, Comment.

246 *Journal of the American Academy of Matrimonial Lawyers*

UIFSA's jurisdictional concepts on "traditional" concepts.²⁷ Long-arm jurisdiction is based on the theory that a person has had "sufficient minimum contacts" with the former state to be subject to the personal jurisdiction of the state's courts.²⁸ This long-arm jurisdiction may be asserted in a proceeding regarding child support or spousal support orders.²⁹

A state may establish a basis for long arm jurisdiction under section 201, in eight different ways:³⁰

- (1) the individual is personally served with [citation, summons, note] within this State,³¹
- (2) the individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in this State;³²
- (4) the individual resided in this State and provided prenatal expenses or support for the child;³³
- (5) the child resides in this State as a result of the acts or directives of the individual;³⁴
- (6) the individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;³⁵
- (7) the individual asserted parentage in the [putative father registry] maintained in this State by the [appropriate agency]; or
- (8) there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

²⁷ John J. Sampson & Paul M. Kurtz, *UIFSA: An Interstate Support Act For the 21st Century*, 27 *Fam. L.Q.* 85, 106-107, n.24-26 (1993).

²⁸ *Kulko v. Superior Court of California, In and For City and County of San Francisco*, 436 U.S. 84 (1978); *In re Marriage of Zinke*, 967 P.2d 210 (Colo.App., 1998); *cf.* *In re Marriage of Crew*, 549 N.W.2d 527 (Iowa, 1996) (holding that frequent contacts between a parent outside the state and a child within the state by phone and mail are not sufficient contacts to meet the minimum contacts threshold.)

²⁹ UIFSA, *supra* note 1; *see* § 201, Comment.

³⁰ *Id.* at § 201.

³¹ *Burnham v. Superior Court of California*, 495 U.S. 604 (1990); *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310 (1945).

³² *Abu-Dalbouh v. Abu-Dalbouh*, 547 N.W.2d 700 (Minn. Ct. App., 1996).

³³ *Id.*

³⁴ *Kulko v. Superior Court*, 436 U.S. 84 (1978).

³⁵ *Abu-Dalbouh*, 547 N.W.2d 700; *Shirley D. v. Carl D.*, 648 N.Y.S.2d 650 (N.Y.A.D. 2 Dept., 1996).

All eight avenues are available to establish long arm jurisdiction in proceedings to establish child support orders, whereas, only three are available in establishing spousal support orders.³⁶ When section 201 can be satisfied the petitioner has two alternatives; first, a petitioner may use the long-arm statute to obtain personal jurisdiction over the respondent; or second, a petitioner may initiate a two state action using the other provisions of UIFSA.³⁷

There are essentially two ways in which a state can lose jurisdiction under UIFSA. First, “none of the litigants or the child live in the state any longer, or second, the parties allow another state to assume exclusive, continuing jurisdiction.”³⁸ When a state loses continuing, exclusive jurisdiction another state does not obtain that jurisdiction merely on the basis that one of the parties is a resident of that state.³⁹ When a state loses exclusive, continuing jurisdiction the state can no longer modify the order it issued nor can it recognize its previous order once the order has been modified by another state.⁴⁰ However, it must still enforce another state’s order or another state’s modification of the order.⁴¹

III. Competing Petitions for Support

A. Establishing a Support Order

Section 204 was drafted to assist in the one-order system established by UIFSA.⁴² Tribunals must take an active role in discovering proceedings in other states regarding a support order.⁴³ This ensures the avoidance of multiple orders. If it is discovered that another tribunal has the support order in front of it, one of the tribunals must defer to the other.⁴⁴ UIFSA asserts that the

³⁶ UIFSA, *supra* note 1, *see* § 201 Comment (only subsections 1, 2, or 8 may be utilized to obtain jurisdiction over a nonresident in a proceeding to establish a spousal support order).

³⁷ *Id.*

³⁸ *See* Levy & Hynes, *supra* note 12, at 647.

³⁹ *Gentzel v. Williams*, 965 P.2d 855 (Kan.App., 1998).

⁴⁰ UIFSA, *supra* note 1, § 205(c); *Gentzel*, 965 P.2d 855.

⁴¹ *See* *Gentzel*, 965 P.2d 855.

⁴² UIFSA, *supra* note 1, § 204, Comment.

⁴³ *Id.*

⁴⁴ *Id.*

248 *Journal of the American Academy of Matrimonial Lawyers*

child's home state is given the priority as the tribunal when a simultaneous proceeding exists in another state.⁴⁵ If no home state exists, "first filing" controls.⁴⁶

Section 204(a) describes the limited ways a tribunal may exercise jurisdiction to establish a support order if a petition or comparable pleading is filed in another state and a home state exists for the child.⁴⁷ A party who enters the second pleading must file a challenge in the party's own state, before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by that state. Then the state where the second pleading was filed may establish a support order if that state is the home state of the child.

Section 204(b) sets out the guidelines of when a tribunal is precluded from exercising jurisdiction in order to establish a support order.⁴⁸ First, if a second petition is filed in another state before the expiration of time to file a responsive pleading in the first state, then the first state may not exercise jurisdiction to establish a support order. Second, the contesting party must timely challenge the exercise of jurisdiction in the first state and third, the second state must be the home state of the child. If all three

⁴⁵ *Id.*; see also § 101(4) "Home state means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a [petition] or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them."

⁴⁶ UIFSA *supra* note 1, at § 204, Comment.

⁴⁷ *Id.* at § 204(a) "A tribunal of this State may exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed after a pleading is filed in another state only if; (1) the [petition] or comparable pleading in this State is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state; (2) the contesting party timely challenges the exercise of jurisdiction in the other state; and (3) if relevant, this State is the home state of the child."

⁴⁸ *Id.* § 204(b) "A tribunal of this State may not exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed before a [petition] or comparable pleading is filed in another state if; (1) the [petition] or comparable pleading in the other state is filed before the expiration of the time allowed in this State for filing a responsive pleading challenging the exercise of jurisdiction by this State; (2) the contesting party timely challenges the exercise of jurisdiction in this State; and (3) if relevant, the other state is the home state of the child."

of these requirements are fulfilled the first state may not exercise jurisdiction to establish a support order.

UIFSA clearly explains which pleading will prevail when competing pleadings exist, regarding the establishment of child support and the home state of the child.⁴⁹ However, UIFSA offers little explicit guidance when petitions are competing to establish a spousal support order.⁵⁰ Guidance in this arena may be found in the commentary to this section, which maintains the view that no home state exists, but the first filing controls.⁵¹

B. *Establishing a Spousal Support Order*

Section 207 provides the rules to determine which order to recognize for purposes of continuing, exclusive jurisdiction when one or more child support orders have been issued. The purpose of this section is to help eliminate the existing multiple support orders.⁵² If only one child support order is in existence then it is the controlling order.⁵³ If multiple orders exist the order of first priority is that which came from the tribunal with continuing, exclusive jurisdiction.⁵⁴ If more than one tribunal were to have continuing exclusive jurisdiction, then the child's home state has priority.⁵⁵ If there is no home state or the child's home state has not issued a support order, section 207(b)(2) states that the most recent order prevails.⁵⁶ If none of the orders are able to satisfy 207(b), then the forum tribunal should issue a new order as long as it has personal jurisdiction over the parties.⁵⁷

⁴⁹ UIFSA, *supra* note 1, sec. 207.

⁵⁰ See Hatamyar, *supra* note 15, at 19-20.

⁵¹ *Id.*

⁵² UIFSA, *supra* note 1, sec. 207, Comment.

⁵³ *Id.* at § 207(a) & Comment.

⁵⁴ *Id.* at § 207(b)(1) & Comment.

⁵⁵ *Id.* at § 207(b)(2) & Comment.

⁵⁶ *Id.* at 207, Comment.

⁵⁷ UIFSA, *supra* note 1, sec. 207, Comment.

IV. Jurisdictional Issues Regarding Spousal Support Orders

A. *Establishing a Spousal Support Order*

UIFSA gives three ways under section 201 to obtain jurisdiction over a nonresident to establish a spousal support order,⁵⁸ unlike the numerous routes that may be taken when establishing child support orders. Jurisdiction may be established under section 201(1) by personally serving the individual,⁵⁹ under section 201(2) by the individual submitting to the jurisdiction by consent⁶⁰ or under section 201(8) there is any other basis.⁶¹ If the petitioned state has no basis for personal jurisdiction over the nonresident, then the petitioner has two options. The petitioner may either file for divorce and support in the respondent's state which does have a basis for personal jurisdiction or file a two state proceeding for support in the petitioner's state which will be forwarded on to the respondent's state.

As long as the requirements of section 401 are fulfilled a tribunal may establish a support order if one has not been issued.⁶² This allows a tribunal of the responding state to issue temporary and permanent support orders binding on the obligor,

⁵⁸ See Hatamyar, *supra* note 15, at 12.

⁵⁹ *Id.* at 80, n.38 (citing *Burnham v. Superior Court*, 495 U.S. 604 (1990) (which held that exercise of personal jurisdiction based on service on the defendant while in the state comports with traditional notions of fair play and substantial justice); see also *Gentzel v. Williams*, 965 P.2d 855, 860 (Kan.App., 1998).

⁶⁰ See Hatamyar, *supra* note 15, at 80, n.39 (citing *McDonald v. Mabee*, 243 U.S. 90 (1917); *Pennoyer v. Neff*, 95 U.S. 714, 720 (1877)).

⁶¹ See Hatamyar, *supra* note 15, at 80, n.40 (citing Mass. Gen. Laws Ann. ch. 223A, § 3(g) (West 1996); N.Y. C.P.L.R. 302(b) (McKinney 1997); OKLA. STAT. ANN. tit. 43, § 104 (West 1996)).

⁶² UIFSA, *supra* note 1, § 401 (“(a) If a support order entitled to recognition under this [Act] has not been issued, a responding tribunal of this State may issue a support order if: (1) the individual seeking the order resides in another state; or (2) the support enforcement agency seeking the order is located in another state. (b) The tribunal may issue a temporary child-support order if: (1) the [respondent] has signed a verified statement acknowledging parentage; (2) the [respondent] has been determined by or pursuant to law to be the parent; or (3) there is other clear and convincing evidence that the [respondent] is the child’s parent.”).

over whom the tribunal has personal jurisdiction.⁶³ Again, UIFSA has incorporated into this section that a tribunal of the responding state is not allowed to issue a support order if there is already one in existence and there is a state which has continuing, exclusive jurisdiction over the order.⁶⁴

Not only must the state have jurisdiction over the nonresident but also the resident to establish a support order. Most often the spouse being domiciled in the state for a requisite period of time can meet this requirement.⁶⁵ If the state does not have jurisdiction over the petitioner, the petitioner will be required to file in a state that does have jurisdiction over them. The problem here may be that the state, which has jurisdiction over the petitioner, may not have jurisdiction over the respondent. In such a situation the petitioner is forced to file in the respondent's forum, giving that forum jurisdiction over the petitioner by consent.⁶⁶

B. *Enforcement of a Spousal Support Order*

Once a spousal support order has been established, several methods arise in which to enforce the order without registering it.⁶⁷ Under UIFSA once a support order has been established it may be registered in another state for enforcement.⁶⁸ Only an order which has been validly issued by a tribunal with continuing, exclusive jurisdiction can be enforced against the obligor.⁶⁹ Each state has the jurisdiction to enforce the order that is registered with it.⁷⁰ The order at this time is still an order of the issuing

⁶³ *Id.* § 401(a) & (b), *see also* Comment.

⁶⁴ *Id.* § 205.

⁶⁵ *See* Hatamyar, *supra* note 15, at 80, n.34 (*citing* *Sosna v. Iowa*, 419 U.S. 393, 409-10 (1975); *Williams v. State of North Carolina*, 317 U.S. 287, 298-99 (1942)).

⁶⁶ UIFSA, *supra* note 1, § 201(2); *and see* 103, Comment.

⁶⁷ *Id.* at § 501-505. The procedures to follow in such a situation are outside the scope of this article so they need not be addressed at this time.

⁶⁸ *Id.* at § 601 ("A support order . . . issued by a tribunal of another state may be registered in this State for enforcement.").

⁶⁹ *Id.* at § 601 Comment; § 205(a).

⁷⁰ *Id.* at § 603(b) ("A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State.").

252 *Journal of the American Academy of Matrimonial Lawyers*

state but may be enforced by another state in which it is registered.⁷¹

Section 602 explains the procedure for registering an order⁷² and section 603 explains the effect of that registration.⁷³ The registering tribunal must then notify the nonregistering party.⁷⁴ Sections 605-608 guide the nonregistering party in the event that party wishes to contest the registration of an order in another state.⁷⁵ If the nonregistering party does not contest the registration then the order will be confirmed and future contests of the order regarding any aspect that could have been asserted at the time of registration are precluded.⁷⁶

C. Modification of a Spousal Support Order

Modification of spousal support orders is extremely limited. The limitation on modifying these orders is based on the restricted idea of continuing, exclusive jurisdiction.⁷⁷ Even though a spousal support order is registered in a state and that state may enforce the order, that state may not modify the order unless it

⁷¹ UIFSA, *supra* note 1, at § 603 Comment.

⁷² *Id.* at § 602 (“(a) A support 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 . . .”); *see also* Allen v. Allen, 1996 WL 547919 (Neb.App., 1996) (holding that § 602 must be strictly construed and all the documents sent to the registering state must comply with § 602).

⁷³ UIFSA, *supra* note 1, at § 603 “(a) A support order . . . issued in another state is registered when the order is filed in the registering tribunal of this State. (b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State. (c) Except as otherwise provided in this article, a tribunal of this State shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.”

⁷⁴ *Id.* at § 605 Notice of Registration of Order.

⁷⁵ *Id.* at § 605 Comment.

⁷⁶ *Id.* at § 608; *see also* Cowan, 903 S.W.2d 119 (Tex.App.-Austin, 1995).

⁷⁷ Stephen J. Belay, *The Interstate Family: Interstate Enforcement of Child Support Orders From URESA to UIFSA and Beyond*, 2 KY. CHILDREN’S RTS. J. 18 (Spring 1992).

was the original issuing state of the order.⁷⁸ Even if a state obtains continuing exclusive jurisdiction over the parties of the order it still may not modify the spousal support order.⁷⁹ Only a state having continuing, exclusive jurisdiction over the original order may modify the spousal support order.⁸⁰ This prohibition to modify spousal support orders by a non-issuing state is consistent with the principle that a tribunal is to apply local law to minimize choice of law problems.⁸¹ If spousal support orders could be modified in another state it would be impossible to avoid conflict of law problems.⁸²

V. Jurisdictional Issues Regarding Child Support Orders

A. Establishing a Child Support Order

Essentially, establishing a child support order works much the same as establishing a spousal support order. There must be personal jurisdiction over the obligor and obligee. If the obligor is a nonresident jurisdiction maybe obtained under section 201.⁸³ Obtaining jurisdiction over a nonresident in a proceeding to establish a child support order is not limited; any of the avenues under section 201 may be utilized.

Again, section 401 allows a responding state to establish a child support order if one has not been issued.⁸⁴ As long as the requirements of section 401 are fulfilled and no other order is filed by a state that has continuing, exclusive jurisdiction, a re-

⁷⁸ UIFSA, *supra* note 1, at § 603(c) (“Except as otherwise provided in this article, a tribunal of this State shall recognize and enforce, but may not modify a registered order if the issuing tribunal had jurisdiction.”).

⁷⁹ UIFSA, *supra* note 1, at § 205(f) (“A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.”).

⁸⁰ *Id.* at §§ 205(f); 206(c).

⁸¹ *Id.* at § 205, Comment; §604; § 303.

⁸² *Id.*

⁸³ UIFSA, *supra* note 1, at § 201; *In re Marriage of Zinke*, 967 P.2d 210 (Colo.App. 1998).

⁸⁴ UIFSA, *supra* note 1, at § 401(a).

254 *Journal of the American Academy of Matrimonial Lawyers*

sponding state may issue temporary and permanent support orders binding on an obligor over whom the tribunal has personal jurisdiction.⁸⁵ This is also comparable to the procedure of establishing a spousal support order.

If a state is unable to obtain personal jurisdiction over the obligor, the obligee will have to file in a state which will be able to obtain jurisdiction over the obligor. If the petitioner does choose to file the original child support action in a state that has jurisdiction over the respondent, the petitioner is also consenting to that state's jurisdiction and foregoes the reliance on UIFSA.⁸⁶

Even though UIFSA offers a wide range of ways for a state to obtain jurisdiction over a nonresident it is not problem free. Recently, in *Abu-Dalbouh v. Abu-Dalbouh*,⁸⁷ the Minnesota district court held that it had jurisdiction to award child support to only one of the obligor's three children. The district court exercised personal jurisdiction over the nonresident for purposes of awarding support for the oldest child based on three grounds. First, the obligor conceived the couple's first child in Minnesota.⁸⁸ Second, respondent resided in that state and provided for himself and the unborn child while residing in Minnesota.⁸⁹ Third, the respondent lived in Minnesota with the child.⁹⁰ None of the factors under section 201 applied to the two youngest children, so the court was unable to award them child support.

It has been proposed that Minnesota should be allowed to exercise personal jurisdiction over the other children in a situation comparable to the *Abu-Dalbouh* situation.⁹¹ Since the respondent is already subject to Minnesota's jurisdiction for some of the support obligations, the added inconvenience of litigation on behalf of the other children would be minimal, and the evidence regarding the obligor's income is already before the

⁸⁵ *Id.* at § 401, Comment; *see also* In re Marriage of Zinke, 967 P.2d 210 (Colo.App. 1998), (*holding* the court lacked subject matter jurisdiction to establish a child support order when another state had previously issued such an order and, therefore, retained continuing, exclusive jurisdiction as to that order).

⁸⁶ *Id.* at § 103, Comment.

⁸⁷ 547 N.W.2d 700 (Minn.App., 1996).

⁸⁸ UIFSA, *supra* note 1, at § 705; *see also* § 201(6).

⁸⁹ *Id.* at § 201(4).

⁹⁰ *Id.* at § 201(3).

⁹¹ *See* Hatamyar, *supra* note 15, at 16.

court.⁹² This is clearly supported by the policy behind section 201 “to give the tribunals in the home state of the supported family the maximum possible opportunity to secure personal jurisdiction over an absent respondent.”⁹³

B. *Enforcement of a Child Support Order*

Once a child support order has been established, there are several ways in which to enforce the order without registering it.⁹⁴ However, registration of the order is the primary method for interstate enforcement of child support; hence, if the goal is enforcement, registration should be sought.⁹⁵

UIFSA has two sets of rules encompassing registration of child support orders: those for enforcing the order and those for modifying the order, which will be addressed in the next section of this article. Section 601 gives the authority of a tribunal to register an order from another state for enforcement. The procedures to follow for registering a child support order for enforcement are the same as those discussed above in Part III regarding the registration of a spousal support order.⁹⁶ If the respondent objects to the registration of the child support for modification, the issuing state retains the jurisdiction to modify until another state is able to obtain jurisdiction to modify.⁹⁷

C. *Modifying a Child Support Order*

The first step to modifying a child support order of another state is to register that order in the state in which modification is desired.⁹⁸ The mere registration and enforcement of an order

⁹² *Id.* at 16-17, 80 n.61-63.

⁹³ UIFSA, *supra* note 1, Prefatory Note; *See also* Hatamyar, *supra* note 15, at 6.

⁹⁴ UIFSA, *supra* note 1, at § 501-505. The procedures to follow when enforcing an unregistered order are outside the scope of this article so they need not be addressed at this time.

⁹⁵ *Id.* at § 601, Comment.

⁹⁶ *Id.* at § 601-608.

⁹⁷ *Porter v. Porter*, 684 A.2d 259 (R.I., 1996).

⁹⁸ UIFSA, *supra* note 1, at § 609 “A party or support enforcement agency seeking to modify, or to modify and enforce, a child-support order issued in another state shall register that order in this State in the same manner provided in (Section 602) if the order has not been registered.”

does not give that state the authority to modify the order.⁹⁹ Only if the requirements of Section 611 have been met will the tribunal of the registering state be allowed to modify the child support order.¹⁰⁰ Even when a state acquires jurisdiction to modify a child support order, it may never modify an aspect of the child support order that could not be modified under the law of the issuing state.¹⁰¹ It is section 611 that gives the registering state the power to modify a child support order if the issuing state no longer has continuing, exclusive jurisdiction over the order.¹⁰² Once a state modifies the order then the issuing state loses and the modifying state gains continuing, exclusive jurisdiction over the order.¹⁰³

Once again under this section UIFSA is trying to accomplish the goal of eliminating multiple support orders by incorporating the principle of continuing, exclusive jurisdiction.¹⁰⁴ The Comment to section 611 explains that only under very limited situations is a non-issuing state allowed to modify a child support order.¹⁰⁵

The Comment further discusses that the purpose behind these restrictive measures is to ensure protection of the parties' rights. Modifying an order is unlike registering an order for enforcement. In registering an order for enforcement in another state the rights of the parties affected have been previously litigated.¹⁰⁶ In modifying an order the probability exists that the rights of the parties will be changed. Therefore, section 611 allows a registering state to acquire jurisdiction to modify the order as if it had originally issued the order.¹⁰⁷

Section 611 is utilized only in the narrowest of circumstances. First, to fall under section 611(a)(1) all parties under the

⁹⁹ *Thompson v. Thompson*, 893 S.W.2d 301 (Tex. App. 1995).

¹⁰⁰ UIFSA, *supra* note 1, at § 610; *see also* *State ex rel. Havlin v. Jamison*, 971 S.W.2d 938 (Mo.App. E.D., 1998).

¹⁰¹ *Id.* at § 611(c).

¹⁰² *Id.* at § 611 Comment.

¹⁰³ *Id.* at § 205(c); *State ex rel. Wallace v. Delaney*, 962 P.2d 187, 191 (Alaska 1998).

¹⁰⁴ *Id.* at § 611 Comment; *see also* *Link v. Alvarado*, 929 S.W.2d 674 (Tex.App.-San Antonio, 1996).

¹⁰⁵ UIFSA, *supra* note 1, at sec. 611, Comment.

¹⁰⁶ *Id.* at § 611, Comment.

¹⁰⁷ *Id.* at § 611(a)(2)&(d).

child-support order must have moved from the issuing state.¹⁰⁸ Second, the petitioner seeking modification can not be a resident of the state in which they wish to modify the order.¹⁰⁹ Third, the respondent must be subject to the personal jurisdiction of the state where modification is sought.¹¹⁰

In only one other situation may a state obtain continuing, exclusive jurisdiction to modify the order. If “the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of (the state where modification is sought) and all of the parties who are individuals have filed written consent in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction over the order,”¹¹¹

The rule has been strictly construed and has resulted in several inconvenient and difficult outcomes.¹¹² The purpose behind such strict construction is to reduce the possibility of multiple support orders and to prevent one of the parties from seeking modification in a tribunal to the disadvantage of the other party.¹¹³ As the comment to section 611 states, “the obligee is required to register the existing order and seek modification of that order in a state which has personal jurisdiction over the obligor other than the state of the obligee’s residence.”¹¹⁴

Section 613 deals with the situation where a request is filed to modify a child support order of another state and all the individual parties to the order reside in the modifying state. As long as all the parties subject to the order, including the child, live in

¹⁰⁸ *Id.* at § 611(a)(1)(i); *see also* State ex rel. Wallace, 962 P.2d at 191 (holding that since the child subject to the support still resided in the issuing state that state retained continuing, exclusive jurisdiction); State ex rel. Havlin, 971 S.W.2d at 939 (holding that Father who intended to return to Tennessee was a resident of Tennessee even though his employment resulted in temporary work out of state); In re Henderson, 982 S.W.2d 566 (Tex.App.-Amarillo, 1998).

¹⁰⁹ *Id.* § 611(a)(1)(ii); *see also* Cepukenas v. Cepukenas, 584 N.W.2d 227 (Wis.App., 1998); Gentzel v. Williams, 965 P.2d 855, 860 (Kan.App., 1998)

¹¹⁰ *Id.* § 611(a)(1)(iii); *see also* Chisholm-Brownlee v. Chisholm, 676 N.Y.S.2d 818 (N.Y.Fam.Ct., 1998).

¹¹¹ UIFSA, *supra* note 1, at § 611(2); *see also* State ex rel. Freeman v. Sadlier, 586 N.W.2d 171 (S.D. 1998).

¹¹² *See* Chisholm-Brownlee, 676 N.Y.S.D. 818; *see also* In re Henderson, 982 S.W.2d 566.

¹¹³ UIFSA, *supra* note 1, at § 611, Comment.

¹¹⁴ *Id.* at sec. 611, Comment.

the state requested to modify, the requested state is granted jurisdiction to enforce and modify the child support order.¹¹⁵ In such a situation the tribunal modifying the order is subject to Articles 1 (the general provisions) and Article 2 (the jurisdictional provisions) of UIFSA.¹¹⁶

VI. Conclusion

The purpose of this article is to point out and explain the specific jurisdictional provisions of UIFSA. The Uniform Interstate Family Support Act is a very significant and important act in facilitating the enforcement of support obligations. Essential to the success of UIFSA is the premise it holds of a one-order system. The drafters of UIFSA have repetitively incorporated the principle of continuing, exclusive jurisdiction so that only one order may be in effect at a time.

With the increasing divorce rate and support obligations¹¹⁷ that arise in conjunction therewith, it is imperative to UIFSA's success that it be properly utilized. Proper utilization can only result if an extensive understanding of UIFSA's long arm jurisdiction provision over nonresidents and the avenues of establishing jurisdiction over the procedures regarding spousal and child support obligations. Hopefully this article will assist in the enlightenment necessary in these areas.

Mechelene DeMaria

¹¹⁵ *Id.* at § 613(a).

¹¹⁶ *Id.* at § 613(b).

¹¹⁷ See Reinventing Child Support Enforcement, 1994: Hearings on Welfare Revision Before the Subcomm. On Human Resources of the U.S. House of Representatives Ways and Means Committee, 103rd Cong. (1994).