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Summary of Vaile v. Porsboll, 128 Nev. Adv. Op. No. 3

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Vaile v. Porsboll, 128 Nev. Adv. Op. No. 3 (Jan. 26, 2012)[1]
FAMILY LAW – CHILD SUPPORT

Summary

The Court addressed an appeal[2] from a district court post-divorce decree order setting fixed monthly child support payments and assessing arrearage and penalties.

Disposition/Outcome

The Court found the district court order to be an impermissible modification and remanded for further proceedings, consistent with the Uniform Interstate Family Support Act ("UIFSA"). Under UIFSA, a Nevada court retains subject matter jurisdiction to *enforce* a Nevada child support order even when the parties and children do not reside in Nevada, provided no other state has assumed jurisdiction. However, without consent, the court lacks subject matter jurisdiction to *modify* such an order when the parties and children do not reside in Nevada. A court may *clarify* an order, but if it changes the parties' rights, it is a modification.

Factual and Procedural History

In 1998, a Nevada district court granted Robert Scotlund Vaile ("Vaile") and Cisilie A. Porsboll ("Porsboll") a divorce. The divorce decree incorporated the parties' agreement on child support payments. Under the agreement, Vaile was required to pay Porsboll monthly child support payments of an amount to be calculated using the parties' annual exchange of income statements or tax return information. The parties never exchanged such financial data or used the method for calculating payments. Nonetheless, Vaile paid Porsboll $1,300 a month in child support from August 1998 to April 2000, when he stopped voluntarily making payments.

In November 2007, Porsboll filed a motion in Nevada district court asking it to establish a "sum certain"[3] amount of child support due from Vaile each month, to calculate Vaile's child support arrears, and to issue a judgment for those arrearages. At the time of the filing, neither the parties nor their children resided in Nevada.

The district court granted Porsboll's motion and set Vaile's monthly child support payment at $1,300, the amount he previously paid voluntarily. Using that amount, the district court calculated Vaile's arrears and assessed him penalties. It then ordered a judgment against him. Vaile appealed and, *inter alia*, challenged the court's child support and penalty determinations, arguing that the district court lacked subject matter jurisdiction to modify the child support agreement in the divorce decree.

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[1] By Thomas L. Chittum, III.

[2] The Court considered the consolidated appeals of both parties but resolved the matter without reaching Porsboll's challenge to the district court's methodology for calculating penalties.

[3] NEV. REV. STAT. § 125B.070(1)(B) (2007).

Discussion

Justice Hardesty wrote for the Court, which reversed the district court's order setting Vaile's support payment at $1,300, reversed the calculation of arrearages and penalties, and remanded for further proceedings. Justices Saitta and Parraguirre concurred.

The UIFSA, which has been enacted in all 50 states, creates a "single-order system" for child support orders, so that only one state's order is effective at any given time.[4] Because no other state had entered a child support order superseding the one incorporated into Vaile and Porsboll's divorce decree, the Nevada order was still the "controlling order."[5]

Under UIFSA, an issuing court retains "continuing and exclusive jurisdiction to modify" its order if, at the time of request for modification, its order is controlling and the parties reside in the issuing state.[6] However, the issuing state lacks authority to modify a support order when the parties and children do not reside there, even if the order is controlling and has not been modified by another state.[7] Here, neither the parties nor children resided in Nevada at the time Porsboll filed her motion. Accordingly, the district court lacked jurisdiction to modify the order.[8]

Nonetheless, the issuing court still had jurisdiction to enforce its order and could clarify its order for purpose of enforcement.[9] The Court therefore had to determine whether the district court order setting Vaile's obligation at $1,300 a month was a clarification or modification.

The Court had not previously examined the distinction between modification and clarification of a district court order in family law context, so it turned to other courts that had. Those courts looked to whether the contested order changed the parties' substantive rights under a previous order or merely defined those rights.[10] The Court concluded that a modification occurs when an order alters the parties' substantive rights, but a clarification involves the court defining the rights that have already been awarded.

Since the monthly support payment awarded in the divorce decree was to be recalculated annually using tax return information or income statements, it was possible the amount would change from year to year. By setting Vaile's payment at the fixed amount of $1,300 a month, the district court "substantively altered the parties' rights" and therefore impermissibly modified, rather than clarified, the child support order.

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[4] Nevada's version of UIFSA was codified at NEV. REV. STAT. CH. 130.

[5] NEV. REV. STAT. § 130.207 (2007).

[6] *Id.* at § 130.205(1)(A) (2007).

[7] *Id.*

[8] The Court noted that parties may consent to a court's jurisdiction to modify a child support order. *See* NEV. REV. STAT. § 130.205(1)(B). Here, however, there was no evidence of either party's consent.

[9] *See* NEV. REV. STAT. § 130.206 (2007); Sidell v. Sidell, 18 A.3d 499, 510-11 (R.I. 2011); Nordstrom v. Nordstrom, 649 S.E. 2d 200, 204 (Va. Ct. App. 2007).

[10] *See* Collins v. Billow, 592 S.E.2d 843, 844-45 (Ga. 2004); Boucher v. Boucher, 191 N.W.2d 85, 89 (Mich. Ct. App. 1971); Ulrich v. Ulrich, 400 N.W. 2d 213, 218 (Minn. Ct. App. 1987); Stoelting v. Stoelting, 412 N.W.2d 861, 862-63 (N.D. 1987); *In Re* Marriage of Jarvis, 792 P.2d 1259, 1261-62 (Wash. Ct. App. 1990).

Conclusion

Under UIFSA, a Nevada court may *enforce* or *clarify* a Nevada child support order even when the parties and children do not reside in Nevada, if no other state has assumed jurisdiction. However, a Nevada court may not *modify* a child support order when neither the parties nor children reside in Nevada, unless the parties consent. It is clarification when the court defines the parties'previously awarded substantive rights, but modification when it alters those rights.