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Summary of Holdaway-Foster v. Brunell, 130 Nev. Adv. Op. 51

Brian Vasek
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FAMILY LAW: CHILD SUPPORT JURISDICTION

Summary

The Court determined whether (1) the Full Faith and Credit for Child Support Orders Act of 1994 applies retroactively, and (2) Nevada had continuing, exclusive jurisdiction over a 1985 child support order modified in Hawaii.

Disposition

The Full Faith and Credit for Child Support Orders Act in 1994 applies retroactively and Nevada has continuing, exclusive jurisdiction over a child support order entered in the State unless the parties have established jurisdiction in a different state.

Factual and Procedural History

Appellant and Respondent divorced in 1985. The district court granted Appellant custody of the parties two children and ordered Respondent to pay child support. The Respondent relocated to Hawaii and allegedly ceased making child support payments. Appellant petitioned the Nevada district court seeking to register the child support order in Hawaii. Hawaii issued an administrative order and reduced the child support order in 1989. Appellant did not contest these modifications. Hawaii further reduced the order in 1992 and 1996. When Appellant filed a motion for controlling order determination and for judgment of arrears in Nevada district court, the court determined that it had lost jurisdiction over the matter. The court could not review or modify the Hawaii court's orders because Appellant failed to contest the orders. Appellant filed this appeal challenging the district court's decision and asserted that the Nevada child support order is controlling under federal law. The Court reviewed the case en banc.

Discussion

Standard of review

The Court first stated that it reviews questions of subject matter jurisdiction de novo.

Retroactive application of the federal law

The Court next discussed the purpose of the Full Faith and Credit for Child Support Orders Act in 1994. Congress enacted the Act to regulate multiple and inconsistent child support orders from different states. Under the Act, the court that issues a child support order has continuing, exclusive jurisdiction. The Act prohibits other states from modifying the child support order unless the parties meet certain jurisdictional criteria.² Under the Supremacy Clause of the United States Constitution, the Act preempts any contrary or inconsistent state law.

Courts generally apply statutes prospectively unless the legislature clearly indicates an intent for retroactive application or the statute's purpose cannot otherwise be satisfied. Courts should also apply statutes retroactively when the statute only affects remedies and procedure and does not create a new substantive right.

The Act does not indicate whether it applies retroactively. However, the Court determined that retroactive application is appropriate. The Act has three purposes: "(1) to facilitate the

¹ By Brian Vasek.

² 8 U.S.C. § 1738B(e) (2012).

enforcement of child support orders among the [s]tates; (2) to discourage continuing interstate controversies over child support . . . ; and (3) to avoid jurisdictional competition and conflict among [s]tate courts [when establishing] child support orders[.]”³ Prospective application would frustrate the Act’s purposes because the issues that Congress designed the Act to resolve would persist. The Act is also remedial in nature because Congress designed to assist in collecting past child support orders. The Court’s decision was consistent with other jurisdictions that have also applied the Act retroactively.

Jurisdiction under the Act

The Court next determined whether Nevada had jurisdiction over the child support order. Under the Act, "a [state] court. . . that has made a child support order consistent[] with [the Act] has continuing, exclusive jurisdiction over the order if the [s]tate is the child's [s]tate or the residence of any individual contestant. . . ," unless another state court has modified the order in accordance with the Act. 28 U.S.C. § 1738B(d). A state court may modify an existing support order of another state if the parties file written consent to the modification. 28 U.S.C. § 1738B(e)(2)(B).

The district court erred by determining that Nevada lacked jurisdiction over the child support order. Nevada had continuing, exclusive jurisdiction because it had jurisdiction when it first issued the order, and the Appellant and her children had continuously resided in Nevada. The Hawaii court could not have properly modified the Nevada order only if the parties filed written consent in Nevada to give Hawaii exclusive, continuing jurisdiction over the Nevada order. The parties did not file this consent, and Hawaii’s court orders have no legal effect.

The district court must still determine whether the Appellant can collect the child support under the order, and the Respondent may still assert equitable defenses such as waiver and estoppel to reduce child support. Due to the jurisdictional error, the district court never addressed these arguments.

Conclusion

The Court concluded that the Nevada court had continuing, exclusive jurisdiction because the Full Faith and Credit for Child Support Orders Act in 1994 applied retroactively.

³ Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994).