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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001388-ME

JOHN G. PORTER — APPELLANT

v.

APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 09-CI-00007

ANGELA PORTER — APPELLEE

OPINION AND ORDER
VACATING

** ** ** ** **

BEFORE: DIXON, LAMBERT AND WINE, JUDGES.

DIXON, JUDGE: Appellant, John Porter, appeals from an order of the Montgomery Circuit Court denying his motion for a modification of child support. Because we conclude that the trial court was without jurisdiction to entertain the motion, we vacate the order.

At the time of the dissolution of their marriage in 2007, John and Appellee, Angela Porter, as well as their three minor children resided in Hillsborough County, Florida. Pursuant to a settlement agreement, which was incorporated into the Florida family court's final decree of dissolution, the parties agreed to joint custody of the children with Angela being the primary residential parent. Further, John agreed to pay child support beyond the applicable guidelines in the amount of $3,000 per month, with an additional $1,000 per month toward the children's extracurricular activities. According to the settlement agreement, John bargained for the extra child support in exchange for a restriction prohibiting Angela from relocating anywhere other than Montgomery County, Kentucky, where John owned a farm.

Angela thereafter relocated to Mt. Sterling, Kentucky and, in January 2009, filed a petition in the Montgomery Circuit Court to enforce the Florida child support obligation. In response, John filed a motion for a reduction in child support pursuant to KRS 403.213, claiming a material change in circumstances. On February 24, 2009, the trial court entered an order adopting the provisions of the Florida decree of dissolution and scheduling a hearing on John's modification motion. However, during a hearing on June 19, 2009, the trial court announced from the bench, "I do not think we need a hearing. He signed the contract, he knew it was not in accordance with the guidelines, I am ready to rule without a hearing. He is not getting out of the contract." On July 7, 2009, the trial court

entered its findings of fact, conclusions of law, and judgment denying modification of John's child support obligation. This appeal ensued.

On appeal, John argues that the trial court applied the wrong standard in denying his motion. Indeed, relying primarily on *Pursley v. Pursley*, 144 S.W.3d 820 (Ky. 2004), the trial court treated John's motion as a challenge to the conscionability and enforceability of the original settlement agreement rather than simply a request to modify his support obligation based on a material change in circumstances. Nevertheless, we need not reach the issue because, although the trial court had jurisdiction to enforce the Florida child support obligation, it lacked jurisdiction to consider a modification of such obligation.

KRS Chapter 407 et seq., enacted in 1998, is modeled after the Uniform Interstate Family Support Act (UIFSA). In an effort to create uniformity among the states in the application of jurisdictional prerequisites to the enforcement of child support and spousal orders, Congress mandated that all states enact statutes similar to the UIFSA before January 1, 1998, as a condition to receiving federal funds. In *Gibson v. Gibson*, 211 S.W.3d 601, 606 (Ky. App. 2006), a panel of this Court explained the UIFSA's purpose:

> In replacing the Uniform Reciprocal Enforcement of Support Act (URESA), the UIFSA brought changes to child support enforcement "by expanding personal jurisdiction over non-resident obligors . . . and eventually creating a 'single-order' system that applies nationally" [footnote omitted]. "The primary purpose of [the] UIFSA was to eliminate multiple and inconsistent support orders by establishing a principle of having only one controlling order in effect at any one time. This principle was

> implemented by a definitional concept called 'continuing, exclusive jurisdiction,' under which the state that issues the support order (the issuing state) retains exclusive jurisdiction over the order, until specified conditions occur which provide a basis for jurisdiction in another state." "Jurisdiction, a term with multiple meanings, primarily indicates the power to adjudicate" [citation omitted]. "Personal jurisdiction is required for child support orders to be enforceable because such orders involve the imposition of a personal obligation to pay money." (Footnotes and citations omitted).

Thus, although the UIFSA grants states the jurisdiction to enforce child support orders issued by another state, it imposes limitations on the states' jurisdiction to modify such orders. In another recent decision with facts analogous to those herein, a panel of this Court further explained:

> At the core of the UIFSA is the concept that the state that issued the child support decree or order retains "continuing, exclusive jurisdiction" unless one of the delineated exceptions are met. Its pervasive presence throughout the Act is exemplified by Kentucky's version of the UIFSA that states: "A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to KRS 407.5101 to 407.5902." KRS 407.5205(4).

Koerner v. Koerner, 270 S.W.3d 413, 415 (Ky. App. 2008).

Modification of a foreign child support decree is governed by KRS 407.5601-407.5701, and is entitled "Enforcement and Modification of Support Order After Registration." As noted in *Koerner,* the statutes contain "'bright line'" rules that must be met before a court can modify an existing child support

order. . . . The requirements are concisely set forth and leave no opportunity for variance or judicial discretion." 270 S.W.3d at 216. Specifically, KRS 407.5611 provides, in relevant part:

> 1) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if KRS 407.5613 does not apply and if after notice and hearing it finds that:
>
> (a) The following requirements are met:
>
> 1. The child, the individual obligee, and the obligor do not reside in the issuing state;
>
> 2. A petitioner who is a nonresident of this state seeks modification; and
>
> 3. The respondent is subject to the personal jurisdiction of the tribunal of this state; or
>
> (b) 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 parties who are individuals have filed written consent with 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 that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.[1]

[1] The UIFSA was amended in 2001. However, the prefatory note of the 2001 UIFSA explains that the amendments do not make fundamental changes in the policies and procedures previously published. *Koerner v. Koerner*, 270 S.W.3d 413, 416, n 2 (Ky. App. 2008) (*Citing Draper v. Burke*, 881 N.E.2d 122 (Mass. 2008)).

Pursuant to KRS 407.5613, jurisdiction to modify a child support order of another state exists if "all of the parties who are individuals reside in this state and the child does not reside in the issuing state. . . ."

Clearly, because John is a Florida resident, KRS 407.5613 has no application herein. Therefore, Kentucky's jurisdiction to modify the decree must be conferred by KRS 407.5611. However, since John is a resident of the issuing tribunal, jurisdiction can only be conferred by evidence of "written consent with the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order." KRS 407.5611(b). We find no indication of such written consent in this record. Accordingly, Florida retains continuing exclusive jurisdiction to modify its support decree, and the trial court herein lacked jurisdiction to entertain John's motion.

The order of the Montgomery Circuit Court is vacated.

ALL CONCUR.

ENTERED: April 2, 2010

/s/ Donna L. Dixon
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

Leah Hawkins
Mt. Sterling, Kentucky

BRIEF FOR APPELLEE:

Stephen E. Neal
Mt. Sterling, Kentucky