ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION II

CA 07-125

OCTOBER 10, 2007

OFFICE OF CHILD SUPPORT ENFORCEMENT APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. DR-05-1475-4-3]
V.	HONORABLE WILLIAM W. BENTON, JUDGE
CLARENCE L. WOOD, JR. APPELLEE	AFFIRMED

This appeal concerns the application of the Uniform Interstate Family Support Act (UIFSA). Appellee Clarence L. Wood was divorced by a decree entered in Kansas in 1992, and he had a child-support duty of $401 per month concerning two children born of the marriage although the decree specified that they had "joint custody." Appellant Office of Child Support Enforcement (OCSE) sought to register the decree in 2005 and enforce the provisions regarding child support, including acquiring a judgment for $181.76 in back-due child support. This was filed in the Jefferson County Circuit Court. At that time, the mother and the children lived in Oklahoma; the father lived in Arkansas. Appellee responded by filing a petition for abatement of child support during extended summer visitation. OCSE responded by disagreeing that any visitation or custody issue was properly before the court,

by asking for registration of the foreign decree, and by asking for an upward modification of the child support duty based upon an admitted increase in earnings by appellee. A hearing was conducted on October 9, 2006, in which the trial court found that the Kansas decree would be registered, that the trial court would not exercise jurisdiction over the petition to modify child support, and that any abatement of child support relative to visitation was a collateral matter and beyond the scope of the UIFSA. OCSE appeals, but appellee Wood did not. We affirm.

Arkansas enacted UIFSA in 1993, and it is codified at Ark. Code Ann. § 9-17-101 et seq. (Repl. 2002). It is manifest from the title of the uniform act, as well as the description of proceedings that may be brought under it, that the enforcement of interstate child support awards is the Act's purpose and focal point. *See* Ark. Code Ann. § 9-17-301 (Repl. 2002). The duties and powers of the responding tribunal relate to the goal of enforcing child support orders. *See* Ark. Code Ann. § 9-17-305 (Repl. 2002). Indeed, the Act specifically prohibits conditioning support orders upon compliance with visitation rights. Ark. Code Ann. § 9-17-305(d) (Repl. 2002). The commentary to section 9-17-305 is even more specific and states that visitation issues should not be litigated in the context of UIFSA proceedings. Commentary to Ark. Code Ann. § 9-17-305 (Repl. 1995).

The supreme court has addressed the issue of whether collateral matters are appropriate for consideration when the issue before the circuit judge is enforcement of child support under a uniform act. *See State v. Robinson*, 311 Ark. 133, 842 S.W.2d 47 (1992);

State v. Kerfoot, 308 Ark. 289, 823 S.W.2d 895 (1992); *Iowa v. Reynolds*, 291 Ark. 488, 725 S.W.2d 847 (1987). In all three cases, the uniform act involved was the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), the predecessor act to UIFSA. The supreme court held in each case that consideration of collateral matters, whether they be visitation rights or affirmative defenses to liability for child support, was error. *See Chaisson v. Ragsdale*, 323 Ark. 373, 914 S.W.2d 739 (1996).

In this particular case, no one disputes that the OCSE was entitled to register the Kansas support order and seek enforcement of it. No one disputes that the circuit court had authority as a "responding tribunal" to enforce the Kansas support order. *See* Ark. Code Ann. § 9-17-305(b)(1) (Repl. 2002). The issue concerns the request for upward modification posited by OCSE, and whether there was error in declining to accept jurisdiction of that issue. Appellant OCSE asserts that in Article 3 of the UIFSA, there are "Civil Provisions of General Application," including Ark. Code Ann. § 9-17-305, which outlines the duties and powers of a responding tribunal, like the Jefferson County Circuit Court. This code section permits certain actions by the responding tribunal of this state, "to the extent otherwise authorized by law," *id.* at subsection (b), including actions to "issue . . . enforce . . . [or] modify a child support order." *Id.* at subsection (b)(1). Article 6 of UIFSA sets forth the law concerning "Enforcement and Modification of Support Order After Registration." Therein, Ark. Code Ann. § 9-17-603(c) (Repl. 2002) provides: "Except as otherwise provided in article 6, a tribunal of this state shall recognize and enforce, but may not modify, a registered

order if the issuing tribunal had jurisdiction." Arkansas Code Annotated section 9-17-611 (Repl. 2002) places the following limitations upon the modification of child-support orders issued in other states:

> (a) 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 § 9-17-613 does not apply and after notice and hearing it finds that:
> (1) the following requirements are met:
> (i) the child, the individual obligee, and the obligor do not reside in the issuing state;
> (ii) a petitioner who is a nonresident of this state seeks modification; and
> (iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or
> (2) 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 consents in 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.

Unless these statutory requirements with respect to the limitations placed upon the modification of foreign child-support orders are met, such orders cannot be modified. *See Office of Child Support Enforcement v. Cook*, 60 Ark. App. 193, 959 S.W.2d 763 (1998). There were no specific findings made to allow the Arkansas court to modify the Kansas decree. More importantly, the Arkansas court was *authorized* but not *mandated* to entertain the request for modification; the statutes use the term "may." *See* Ark. Code Ann. § 9-17-305(b) and 9-17-611(a). Inasmuch as the parties were before the court and were seeking relief pertaining to child support it would have served their convenience and judicial economy for the trial court to have exercised its jurisdiction. Appellant's request for an

increase in support was not a collateral matter. However, we do not conclude that the trial court abused its discretion in declining to address these issues.

Appellee Wood argues in his brief that the trial court erred in not permitting him an abatement in child support. This issue is moot; appellee did not file a notice of cross appeal to our court. A notice of cross-appeal is required when the appellee seeks affirmative relief that was not granted in the lower court. *See Office of Child Support Enforcement v. Pyron*, __ Ark. __, __ S.W.3d __ (Oct. 13, 2005). Because Mr. Wood seeks affirmative relief that was not granted below and did not file a cross-appeal, he is precluded from raising this argument on appeal.

For the foregoing reasons, we affirm.

PITTMAN, C.J., and GLADWIN, J., agree.