STATE OF MICHIGAN

COURT OF APPEALS

DIRKJE METHORST, Plaintiff-Appellee,	UNPUBLISHED March 17, 2011
v	No. 294770 Newaygo Circuit Court
LEO VERKERK, Defendant-Appellant.	LC No. 2007-007628-UN

Before: SERVITTO, P.J., and GLEICHER and SHAPIRO, JJ.

PER CURIAM.

Dirkje Methorst and Leo Verkerk married and divorced in the Netherlands. In 1992, following the divorce, Verkerk immigrated to the United States. Approximately 15 years later, Methorst filed an affidavit with the Newaygo Friend of the Court (FOC) alleging that Verkerk owed unpaid alimony and child support. The circuit court eventually ordered Verkerk to pay an outstanding balance of more than $160,000. We reverse and remand.

I. UNDERLYING FACTS AND PROCEEDINGS

On August 22, 2007, the Newaygo FOC submitted to the Newaygo Circuit Court an "Interstate Request Form" that sought a new docket number for an action under the Uniform Interstate Family Support Act, MCL 552.1101 *et seq.* (UIFSA). On the same day, the FOC filed with the circuit court a partially typed, partially handwritten document entitled, "Registration Statement," which identified Methorst as the "petitioner." A number of pages accompanied the form, including copies of photos of Verkerk, a "sworn statement of arrears concerning the case Verkerk—Methorst," and an excerpt of a Dutch statute, provided mostly in Dutch. The "sworn statement of arrears" consists of equations representing yearly alimony and child support amounts due; however, the documents do not reference the source of the information used to calculate the arrearages. Conspicuously absent from the packet of documents is a copy of a judicial order or judgment.[1] Although the circuit court's register of actions denotes a "final order

[1] One of the forms in the packet of documents, entitled "Transmittal & Acknowledgment," states that "Support Order(s)" were "provided with this transmittal." But no orders appear in the circuit

or judgment filed" on August 22, 2007, none was attached to the documents filed with the circuit court on August 22, 2007, and the record nowhere else contains any Dutch order or judgment.

On December 17, 2007, the FOC petitioned the circuit court for an order to show cause why it should not hold Verkerk in contempt for failing to pay outstanding child support of $162,105.16. The FOC derived this figure from the calculations supplied by Methorst, which appear in Euros rather than United States dollars. The record reveals no indication of the manner in which the FOC converted the value of Methorst's claim from Euros to dollars.[2] Nor does the record contain a circuit court order registering a Dutch support order. On December 31, 2007, the circuit court granted the FOC's order to show cause and demanded that Verkerk appear before a referee in January 2008. According to an order entered on February 4, 2008, the referee adjourned the show cause hearing to April 2008 for the following reason:

> Friend of the Court is to contact the initiating country, in writing, to request any information regarding possible Social Security benefits that the children of this case may have received on behalf of the Defendant, and to inquire if the Defendant should receive any credit towards his arrears for these payments.

The record gives no indication that the Netherlands supplied any additional information.

The next entry in the circuit court record consists of an order issuing a bench warrant for Verkerk's arrest on the basis of his failure to appear at the April 2008 hearing. Subsequently, Verkerk was arrested, and on May 12, 2008, the circuit court sentenced him to 45 days in jail, "to be released upon payment of $1,326.25" to the FOC. Verkerk paid the identified sum and made two installment payments toward the arrearage claimed in Methort's affidavit. On September 23, 2008, the circuit court entered another show cause order compelling Verkerk to attend an October 2008 hearing before a FOC referee. Verkerk appeared on the hearing date and requested counsel. The referee appointed an attorney to represent Verkerk and continued the hearing to the next day. At the hearing, Verkerk's counsel asserted that Verkerk contested the amount of the arrearage. The referee found Verkerk in contempt for neglecting to make the payments ordered by the circuit court, ordered 90 days in jail, but allowed for suspension of the sentence if defendant made several of the missed payments. The circuit court adopted the referee's recommendations.

Once again, Verkerk did not make the ordered payments, and in April 2009, the circuit court entered another show cause order. Verkerk retained counsel, who filed a response challenging the circuit court orders as barred by the Uniform Foreign Country Money Judgments Recognition Act (UFCMJRA), MCL 691.1131 *et seq*. Verkerk further asserted that the doctrine of laches should preclude Methorst's claims. At a hearing in April 2009, the referee rejected Verkerk's positions, and he sought review in the circuit court. In May 2009, the circuit court entered a written order finding that

court record. And although these documents were filed in the Newaygo Circuit Court in 2007, they bear 2004 signatures of Methorst, her children, and an official in the Netherlands.

[2] The "Registration Statement" form also notes that the initial support order was in Dutch guilders, which Euros replaced in 2002.

> the principles of comity and res judicata mandate that the child and spousal support obligations created in The Netherlands' court be enforced. *Dart v Dart*, 460 Mich 573[; 597 NW2d 82] (1999). Also, I agree with the Referee's conclusion that the defendant did not present any facts or circumstances which would bar the enforcement of these obligations based on the equitable doctrine defense of laches.

The circuit court affirmed the referee's order and remanded the matter to the referee for consideration of Verkerk's request to modify the order in light of his recent heart attack. The circuit court also permitted Verkerk to raise additional legal challenges to the court's orders. In October 2009, the referee rejected the additional arguments raised by defendant, including his defenses relating to periods of limitation, which the circuit court thereafter rejected also. This Court granted Verkerk's application for leave to appeal. *Methorst v Verkerk*, unpublished order of the Court of Appeals, entered February 23, 2010 (Docket No. 294770).

II. ANALYSIS

Verkerk contends that Michigan and Dutch periods of limitation bar Methorst's claims. However, we need not address this issue because the circuit court lacked subject-matter jurisdiction to enforce any support orders against Verkerk. "Lack of jurisdiction of the subject matter may be raised at any time and the parties to an action cannot confer jurisdiction by their conduct or action nor can they waive the defense by not raising it." *Paulson v Secretary of State*, 154 Mich App 626, 630-631; 398 NW2d 477 (1986). We consider de novo the legal question whether a circuit court possesses subject-matter jurisdiction and legal issues concerning statutory interpretation. *People v Glass*, 288 Mich App 399, 400; ___ NW2d ___ (2010).

A. THE UIFSA

The FOC commenced this action on Methorst's behalf under the UIFSA. Therefore, we first consider if the UIFSA afforded the circuit court subject-matter jurisdiction to enforce Verkerk's Dutch support obligations.

> When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written. [*Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 10; 654 NW2d 610 (2002) (internal quotation omitted).]

The UIFSA governs the procedure for enforcing foreign child and spousal support orders. Its stated purpose is "to make uniform the law with respect to the subject of this act among states enacting it." MCL 552.1107. As used in the UIFSA the term "state" includes "a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this act, the uniform

reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act, . . . MCL 780.151 to 780.183." MCL 552.1104(f). We detect no indication that the circuit court ever considered whether the Netherlands falls within the UIFSA's definition of a "state." Federal statutes, 42 USC 659a(a)(1), (b)(1)(A)(i) and (ii), permit the United States Secretary of State to identify "foreign reciprocating countr[ies]" that have established "procedures, available to residents of the United States ... for establishment of . . . orders of support for children," and "for enforcement of orders to provide support to children ...." Reciprocating countries must provide procedures, "including legal and administrative assistance ... to residents of the United States at no cost." 42 USC 659a(b)(1)(B). The Secretary of State gave notice in the December 2, 2002 Federal Register that, as of May 1, 2002, the Netherlands had been declared a "reciprocating countr[y]." 67 Fed Reg 71605-71606 (2002). Accordingly, we assume that the Netherlands comes within the UIFSA's definition of a "state" for purposes of enforcing child and spousal support orders.

Section 318 of the UIFSA sets forth the following procedure for establishing circuit court jurisdiction to enforce a foreign support order:

> A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this act shall verify the petition. Unless otherwise ordered under section 320, the petition or accompanying documents shall provide, so far as known, the obligor's and obligee's name, residential addresses, and social security numbers, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. *The petition shall be accompanied by a certified copy of any support order in effect.* The petition may include other information that may assist in locating or identifying the respondent. [MCL 552.1318(1) (emphasis added).]

Under the UIFSA, Michigan may serve as a "responding tribunal for proceedings initiated in another state." MCL 552.1221. "A party seeking to enforce" another state's support order "may send the documents required for registering the order to a support enforcement agency of this state." MCL 552.1502. Alternatively, the support enforcement agency may, "if appropriate," administratively enforce another state's support order without registration of the order. MCL 552.1502(2). But if the individual who owes support "contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order as provided in this act." *Id.*

Here, the Newaygo FOC attempted to register the Netherlands' support orders by filing in the circuit court the "Interstate Request Form." Although the record is not entirely clear, the FOC seemingly intended the form to operate as the basis for establishing the circuit court's jurisdiction to enforce the support orders entered in the Netherlands. Section 601 sets forth the following procedure for registering for enforcement a support order issued by another state:

> (1) A support order or an income withholding order issued by another state's tribunal may be registered in this state for enforcement by sending all of the following documents and information to this state's tribunal:

(a) A transmittal letter to the tribunal requesting registration and enforcement.

(b) *Two copies, including 1 certified copy, of all orders to be registered, including any modification of an order.*

(c) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage.

(d) The obligor's name and each of the following that is known:

(i) The obligor's address and social security number.

(ii) The name and address of the obligor's employer and any other source of income to the obligor.

(iii) A description and the location of the obligor's property in this state not exempt from execution.

(e) The obligee's name and address and, if applicable, the agency or person to whom support payments are to be remitted.

(2) On receipt of a registration request, the registering tribunal shall cause the order to be filed as a foreign judgment, together with 1 copy of the documents and information, regardless of their form. [Emphasis added.]

The circuit court record lacks a copy of *any* support order entered in the Netherlands. Moreover, the circuit court never entered an order registering a support order from the Netherlands, as required by MCL 552.1502(2). Consequently, the circuit court did not possess jurisdiction under the UIFSA to enforce child and spousal support orders against Verkerk.

B. COMITY AND RES JUDICATA

The circuit ruled that "the principles of comity and res judicata mandate that the child and spousal support obligations created in The Netherlands' court be enforced." We next consider whether the circuit court properly invoked its subject-matter jurisdiction on these grounds. In *Dart*, 460 Mich at 580, our Supreme Court defined comity as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws." (Internal quotation omitted.) Comity "is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other." *Hilton v Guyot*, 159 US 113, 163-164; 16 S Ct 139; 40 L Ed 95 (1895). In *Dart*, the Michigan Supreme Court applied the following factors identified in *Hilton* that dictate whether a court should give full effect to a judgment of a foreign country:

"Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of

> jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact." [*Dart*, 460 Mich at 581, quoting *Hilton*, 159 US at 202-203.]

The United States Supreme Court emphasized in *Hilton* that before invoking comity, "it is the paramount duty of the court, before which any suit is brought, to see to it that the parties have had a fair and impartial trial, before a final decision is rendered against either party." 159 US at 205. The Supreme Court outlined as follows the considerations relevant to that determination:

> When an action is brought in a court of this country, by a citizen of a foreign country against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, *and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged*; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that, by the principles of international law, and by the comity of our own country, it should not be given full credit and effect. [*Id*. at 205-206 (emphasis added).]

Here, the circuit court lacked any "clear and formal record" of the Netherlands proceedings. *Hilton*, 159 US at 205-206. Neither a judgment nor an order of a Netherlands tribunal appears in the record. The evidence on which the circuit court relied to enforce a purported judgment rendered in the Netherlands consisted of a form affidavit signed by Methorst, unaccompanied by any document even remotely appearing consistent with a court order of alimony or child support. Absent any evidence substantiating the content of a foreign judgment, the circuit court erred by exercising jurisdiction on the basis of international comity and res judicata.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher
/s/ Douglas B. Shapiro