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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1816**

Jon K. Meikle, petitioner,
Respondent,

vs.

Brenda K. Winner-Hite Meikle,
n/k/a Brenda McKenney,
Appellant.

**Filed May 16, 2011
Affirmed
Stoneburner, Judge**

Lake of the Woods County District Court
File No. F201167

Rita Fish-Whitlock, Alan B. Fish, P.A., Roseau, Minnesota (for respondent)

Nancy A. Roe, Colosimo, Patchin, Kearney & Brunfelt, Ltd., Virginia, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Minge, Judge; and Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant mother challenges the Minnesota district court's exercise of jurisdiction over child support and the order holding that under applicable law, New Mexico's child-support orders are void for lack of jurisdiction. We affirm.

FACTS

Appellant Brenda K. McKenney (mother) and respondent Jon K. Meikle (father) were married in New Mexico in February 2001. They moved to Minnesota but soon separated, and mother moved back to New Mexico in July 2001, where she gave birth to the parties' child in January 2002. The marriage was dissolved by judgment of the Minnesota district court in October 2002, at which time the issues of custody and parenting time were reserved.

In an October 12, 2004 order, the Minnesota district court awarded temporary legal and physical custody of the child to both parties and established a temporary child-support obligation for father. On October 29, 2004, mother filed a petition to establish New Mexico's jurisdiction over custody issues.

In *Meikle v. Meikle*, No. A05-2166, 2007 WL 46037, at *3, *5 (Minn. App. Jan. 9, 2007), this court, noting that the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) contains controlling provisions concerning jurisdiction over custody issues, held that, although Minnesota has jurisdiction over the dissolution of marriage action, New Mexico has jurisdiction over the issues of custody and parenting time.

In February 2007, the New Mexico district court issued a temporary child-support order, requiring father to pay \$400 per month in child support. Father made payments under this order from March 2007 through December 2009. In March 2009, father moved for modification of child support in the New Mexico district court. In December 2009, the New Mexico district court ordered father to pay child support in the amount of \$803.20 per month. Father appealed to the New Mexico Court of Appeals in January 2010. The New Mexico Court of Appeals subsequently dismissed father's appeal because the order appealed from was not a final order.

While the New Mexico appeal was pending, father, in February 2010, moved the Minnesota district court for an order declaring that, under the Uniform Interstate Family Support Act (UIFSA), which contains controlling provisions concerning jurisdiction over child-support matters, the 2004 Minnesota temporary child-support order gave Minnesota continuing, exclusive jurisdiction over the issue of child support, rendering the New Mexico child-support orders void. In August 2010, the Minnesota district court agreed and declared that, under the UIFSA, Minnesota has continuing, exclusive jurisdiction over child support. In this appeal, mother challenges that decision.

D E C I S I O N

Jurisdictional questions and the meaning of statutes addressing jurisdiction present issues of law that we review de novo. *Wareham v. Wareham*, 791 N.W.2d 562, 564 (Minn. App. 2010). The UIFSA has been adopted by all 50 states and addresses the competing interests of states in exercising jurisdiction over child support. *See id.* The

UIFSA is codified in Minnesota as Minn. Stat. §§ 518C.101–.902 (2010) and in New Mexico as N.M. Stat. §§ 40-6A-100 to -903 (2010), with substantially the same language.

Minn. Stat. § 518C.205 and N.M. Stat. § 40-6A-205 address the way in which a state acquires continuing, exclusive jurisdiction over a child-support issue. Minn. Stat. § 518C.205 provides:

(a) A tribunal of this state issuing a support order^[1] consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

....

(d) 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 this chapter or a law substantially similar to this chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

Minn. Stat. § 518C.204 and N.M. Stat. § 40-6A-204 describe the way in which another state may acquire jurisdiction over child support after a petition or comparable pleading has been filed in another state. Minn. Stat. § 518C.204 provides:

¹ Under the UIFSA, “support order” is defined as “a judgment, decree, or order, whether *temporary*, final, or subject to modification, for the benefit of a child, spouse, or former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney’s fees, and other relief.” Minn. Stat. § 518C.10 (u) (emphasis added).

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state; and

(3) if relevant, this state is the home state of the child.

The New Mexico district court, by order entered on March 22, 2006, assumed jurisdiction to establish initial child support under the UIFSA based on its finding that “[t]he Minnesota temporary child support order was entered while a jurisdictional issue was pending and was not entitled to full faith and credit. . . .” The New Mexico district court also found that “[o]n May 31, 2005, the Minnesota Court issued an order dismissing all matters related to child support.” But mother never challenged Minnesota’s jurisdiction over child support; she did not challenge Minnesota’s jurisdiction over child custody until after a child-support order was issued by the Minnesota district court; and the May 31, 2005 order conceding New Mexico’s jurisdiction over child-custody issues does not address child support. New Mexico therefore assumed jurisdiction over child support in violation of the UIFSA.

The Minnesota district court, noting that “support issues do not axiomatically follow custody issues,” correctly held that New Mexico lacks jurisdiction over child-support because there was no jurisdictional conflict pending when the temporary child-support order, sought by mother, was issued in October 2004.

The record shows that in 2004, when mother sought a child-support order in Minnesota, she also requested a change of venue, but she did not challenge Minnesota's jurisdiction over child support. Therefore, the Minnesota district court's October 12, 2004 temporary child-support order gave Minnesota continuing, exclusive jurisdiction over child support under Minn. Stat. § 518C.205 and the comparable provision in New Mexico's codification of the UIFSA. Although the order was for temporary support, it was not issued ex parte: both parties were present. Because Minnesota obtained continuing, exclusive jurisdiction in 2004, New Mexico did not thereafter have jurisdiction to establish child support or modify the Minnesota child-support order.²

The UIFSA provides that parties may file written consents with the Minnesota district court "for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction." Minn. Stat. § 518C.205(a)(2). But no written consents to transfer of jurisdiction have been filed in this case. And the UIFSA does not provide that jurisdiction is waived by an individual's appearance in another tribunal. Therefore, father's appearance in New Mexico on child-support issues did not transfer jurisdiction over child-support issues to New Mexico, no matter how desirable it might be to have a single tribunal exercising jurisdiction over custody and support issues involving one child. Under the UIFSA, the child-support orders issued in New Mexico are void for lack

² From the memorandum attached to the August 2010 Minnesota order asserting jurisdiction over child support, it appears that the Minnesota district court had earlier erroneously assumed that the transfer of jurisdiction over custody included jurisdiction over child support and may have communicated this erroneous understanding to the New Mexico district court in a telephone conversation in December 2004. But the erroneous communication was not sufficient to transfer jurisdiction under the UIFSA.

of jurisdiction, and the district court in Minnesota has continuing, exclusive jurisdiction over child support until compliance with the UIFSA allows a tribunal of another state to exercise jurisdiction over child support. We note that the Minnesota district court, acknowledging the time and effort expended by the New Mexico district court on the issue of child support, has determined that it will take judicial notice of the contents of the New Mexico district court file in establishing father's child-support obligation.

On appeal, mother appears to argue for the first time that Minnesota lacks jurisdiction over child support because it never had personal jurisdiction over her. This argument lacks merit because mother's appearance in Minnesota waived any defense of lack of personal jurisdiction that she might have asserted. *See In re Ivey*, 687 N.W.2d 666, 670 (Minn. App. 2004) (stating that the defense of lack of personal jurisdiction can be waived), *review denied* (Minn. Dec. 22, 2004). We decline to further address this argument. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court generally will not consider matters not argued to and considered by the district court).

Affirmed.