IN THE SUPREME COURT OF OHIO

LILLIAN RIVERA CRUZ,	:	
Appellant,	:	
	:	Case No. 06-0973
v.	:	
	:	On Appeal from the Cuyahoga County Court of Appeals, Eight Appellate District
LUIS CUMBA-ORTIZ	:	
Appellee	:	

MERIT BRIEF OF APPELLEE LUIS CUMBA ORTIZ

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MERIT BRIEF OF APPELLEE LUIS CUMBA ORTIZ

INTRODUCTION

Lillian Rivera Cruz, Plaintiff/Appellant (hereinafter "Appellant") and Luis Cumba Ortiz, Defendant/Appellee (hereinafter "Appellee"), were young when she became pregnant and they married in New York, IN 1969. The Appellant left New York with a new boyfriend before giving birth to Luis's child. Three years later, he received a Final Journal Entry of his Divorce and of a Child Support Order from a Puerto Rico Court. In 1975 the Appellant moved back to New York with the child and personally brought to the Family Court in New York a petition for the enforcement of the Puerto Rico order of support. Both Mother and father went to court and the New York Court modified the support order to fifteen dollars a week and

specifically held that the "Puerto Rico Court has not retained exclusive Jurisdiction to enforce said (decree) (order). The appellant disappeared and the New York terminated the support order. In 2003, after that for twenty five years, the Appellant came to light by filling for support payments since the issuing of the Puerto Rico Divorce and without even mentioning her involvement with the New York Court or the reduction the New York Court made.

STATEMENT OF THE CASE AND FACTS

As stated in the Magistrate's order, Lillian Rivera Cruz and Luis Cumba Ortiz were married in New York, in 1969. At that time, they were only seventeen years old. They separated a few months later, before the child was born, Lillian Rivera Cruz disappeared from New York and allegedly moved to Philadelphia with a new boyfriend. She had a child, Leslie Cumba on. August 18, 1970. She never notified the Luis Cumba Ortiz of his child's birth, nor let him know where she was residing with the child.

A year later, when Luis was eighteen years old, he received a copy of a Journal Entry from a Puerto Rico Court. This order was finalizing his divorce from Lillian Rivera Cruz. He never received notification of that

action while it was pending, but he accepted the divorce decree and the child support order pay forty (40) dollars a week for child support. At the time, Luis was making only ninety dollars a week, Even thought he was still residing at the same place, he never heard anything from is ex-wife, the child or where they were residing.

In 1975 Lillian Rivera Cruz moved back to New York with the child. Lillian personally brought to the Family Court of Suffolk County in New York a petition for the enforcement of the Puerto Rico order of support. Luis received notice of the support action from the Family Court of Suffolk County in New York. Both Mother and father went to court and the New York Court modified the support order to fifteen dollars a week and specifically held that the "Puerto Rico Court has not retained exclusive Jurisdiction to enforce said (decree) (order)."

After that, even thought he was still residing at the same place and was paying child support, he where his ex-wife and the child were residing. Sometime between 1977 and early 1978, Lillian Rivera disappeared again with the child. She failed to notifying any agency or to tell Luis of her whereabouts. On April 19, 1978, Luis went back to the Family Court in New York. The Court, after trying unsuccessfully to find Lillian Rivera,

terminated the support order on the grounds that petitioner was no longer within the jurisdiction of the court.

Even after child support payments were stopped, she failed to contact the court, any agency or Luis, who still lived at the same residence. She took their daughter and had basically disappeared without a trace. Luis Cumba went on with his life and eventually moved to Cleveland, Ohio, where he has been a productive member of our community.

It was not until December 2003, twenty-five years later, that he heard again from his ex-wife by way of a notification from the Puerto Rico Child Support Enforcement Agency. Lillian Rivera was now trying to collect the sum of $65,306.62 for alleged arrears. The $65, 306.62 amount was calculated based on the initial 40 dollars a week ordered by the Puerto Rico Court in October 4, 1971. Nowhere in the order is it considered the modification made in New York from $40.00 to $25.00, of the payments he made for years while they all were living in New York, nor of the final termination of the order in New York. In fact, the Worksheet to Determine Arrears Prepared in Puerto Rico clearly shows that she only mentioned payments made until 1975.

A hearing for the registering the Puerto Rico Court Order was held in this Honorable Court on June 10, 2004. Luis accepted the registration of the

order, however, it was included in the order that "**By consenting to the Registration of this Puerto Rico Court Order, the Respondent/Obligor does not waive any Jurisdictional Defenses for relief from All Puerto Rico Court Orders**." Emphasis added.

While this procedure was taking place in our Court, Lillian Rivera was asking the Puerto Rico Court to modify the support order, increase the amount of support and to continue it beyond the child's eighteenth birthday. Even though it had been 15 years since the child became an adult, Lillian Rivera Cruz now alleged that her now thirty-thee years old daughter is permanently disabled since her infancy. The Puerto Rico Court accepted her argument and issued an order to modified child support on April 16th 2004. On July 6, 2004, the Puerto Rico Court increased the child support order to $1,676 monthly. The Puerto Rico Court also increased the arrears to $66,843.94, even though payments are being made as they are being deducted from Luis' salary.

A hearing was held on January 20, 2005 in which the Appellee argued that the Puerto Rico courts lacked subject matter jurisdiction as it had lost it's "continuing exclusive jurisdiction" to enforce the original child support order. Arguments were made by both parties and the matter was considered heard and submitted. On February 23, 2005, The Magistrates decision was

filed with the lower court. In this decision, the Magistrate agreed that Puerto Rico courts lost its "continuing exclusive jurisdiction," but that that was irrelevant as the appellee had signed the registration of the order.

On March 30 the trial court held the motion to determine jurisdiction and/or dismiss for lack of subject matter jurisdiction was granted in part and denied in part. Luis Cumba Ortiz responded by filing a Motion to Vacate the Judgment as subject matter jurisdiction cannot be waived. The trial court denied the motion to vacate.

The Appelle appealed to the Eight District of Appeals which reversed. See Cruz v. Cumba-Ortiz, Cuyahoga App. No. 86572, 2006-Ohio-1362. The Eigth District of Appeals affirmed the trial court's judgment regarding the registration of the Puerto Rico support order concerning the child's prospective care. However, the trial court's order which enforced Puerto Rico's attempt to collect the arrears stemming from the 1971 order was vacated, and the case was remanded for recalculation of arrears that accrued from 1971 until 1976.

On August 25, 2006, this Honorable Court granted jurisdiction to hear the case and allowed the appeal.

ARGUMENT IN OPPOSITION TO THE PROPOSITIONS OF LAW

PROPOSITION OF LAW I:
IT WAS NOT AN ABUSE OF DISCRETION TO APPLY THE UNIFORM INTERSTATE FAMILY SUPPORT ACT AND THE FEDERAL FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT.

I. Full Faith and Credit

The Appellant argues that under URESA, the Ohio Court has the obligation of registering the Puerto Rico Order without it being affected by the New York order. The Appellant is requesting that we recognize the Puerto Rico order pursuant to the Full Faith and Credit Clause.

However, The United Sates Supreme Court has determined that prior to crediting a foreign judgment, a State may inquire as to the jurisdictional basis of that judgment. See, *e.g.*, *Underwriters Nat. Assur. Co. v. North Carolina Life and Acc. and Health Ins. Guaranty Ass'n* (1982), 455 U.S. 691, 704-05, 71 L. Ed. 2d 558, 102 S. Ct. 1357. Moreover, the "Full Faith and Credit for Child Support Orders Act, 28 U.S.C.S. § 1738, provides that a court can modify a child-support order of another state's court only in two circumstances: (1) if the court has jurisdiction to do so (by a party or an agency registering the order from the other state in a state with jurisdiction over the nonmovant) and if the court of the other state no longer has continuing, **exclusive jurisdiction of the child-support** order because the child or any contestant is no longer a resident of the state; or (2) if each

contestant files written consent for the state to make the modification and to assume continuing, exclusive jurisdiction over the order. Consequently, Ohio courts have no jurisdiction to modify an initiating court's order unless the exceptions are met. See Walker v. Amos (2000), 140 Ohio App. 3d 32. (Emphasis Added)

II. **Exclusive, continuing jurisdiction**

In his first Proposition of Law, the Plaintiff-Appellant alleges that the Appellate Court application of the Uniform Interstate Support Act and the Full Faith and Credit for Child Support Orders Act affected a substantive right and not a procedural right. This argument is not valid.

The Plaintiff-Appellant also argues that only Puerto Rico has continuing and exclusive jurisdiction because the initial order comes from there and because the New York court order was terminated. In support of his argument, the Appellant cites Perez v. Ponce (1999), Summit App. No. 18996, However, in the Perez Case, the mother and the child did not leave the issuing jurisdiction. Moreover, the Appellant is not considering Puerto Rico Law and the fact that the New York Order was issued after the Appellant herself brought the action to that court and all of the parties were actually residing in New York. Neither of the party was domiciled in Puerto Rico at the time.

In 1976 Lillian Rivera moved back to New York with the child and personally brought to the Family Court of Suffolk County in New York a petition for the Enforcement of the Puerto Rico order of support. This order was modified by the New York Court to twenty five dollars a week, from the original forty dollars a week. Years latter, the New York Court terminated the order when she disappeared without a trace. The Puerto Rico Court clearly lost its continuing, exclusive jurisdiction over the matter when the Plaintiff-Appellant and the child moved back to New York and brought the action to the New York Courts. The New York Court understood this and made it clear when it held that "Puerto Rico Court has not retained exclusive Jurisdiction to enforce said (decree) (order)"

Puerto Rico and exclusive, continuing jurisdiction

Puerto Rico has jurisdiction for the purpose of issuing a new support order as the adult-child as the Appellant now resides in Puerto Rico with the adult-child. However, it is only for the purpose the enforcement of the 1972 order from the issuing of the original order until all the parties moved to New York and the courts in New York issued a new order for the support of the adult-child.

The Appellant cannot argue that Puerto Rico maintains continuing exclusive jurisdiction without looking at the applicable law in Puerto Rico first.

In fact, Puerto Rico Law is quite clear about this issue. 8 L.P.R.A. § 542d as states as follows:

> (a) A tribunal of Puerto Rico issuing a support order consistent with the law of Puerto Rico has continuing, exclusive jurisdiction over a child support order:
> (1) **As long as Puerto Rico remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued**; or
>
> ***
>
> (b) If a child support order of Puerto Rico is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, **a tribunal of Puerto Rico loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in Puerto Rico, and may only:**
> (1) Enforce the order that was modified as to amounts accruing before the modification;
> (2) enforce nonmodifiable aspects of that order, and
> (3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.
>
> ***
>
> (Emphasis Added)

The leading case in Puerto Rico dealing with the issue of continuing, exclusive jurisdiction is the case of Aponte v. Barbosa Dieppa, 146 D.P.R. 558 (1998). Even though this case is in Spanish and was not able to find a translated version of this case from the Puerto Rico Supreme Court, the annotations in T.8 L.P.R.A. Sections 541 and 542 (see Appendice) are in English and provide the decision of the Court.

As it was held by the Puerto Rico Supreme Court, "[a] court that renders a support order for the benefit of a minor, loses its continuing and exclusive jurisdiction in two forms: (1) when all the parties are no longer residing in the state, or (2) when all the parties have consented in writing that the court of another state modify the order and assume continuing and exclusive jurisdiction." Aponte v. Barbosa Dieppa, 146 D.P.R. 558 (1998).

Finally, The Aponte Court held that "Sections 541 through 548c of this title are a statute of essentially remedial character, whose purpose is to establish a uniform process to effectuate the execution of a support order of one state in another, and as such, it should be applied retroactively. See Aponte v. Barbosa Dieppa,supra. See also T. 8 L.P.R.A. Sec.541.

Ohio and exclusive, continuing jurisdiction

In Dunn v. Dunn (200) 137 Ohio App. 3d 117, the Appellate Court confronted a similar situation as in the case sub judice. The Dunn court held that the retroactive application of both URESA and FFCCSOA was of a procedural nature if it was done for the purpose of determining witch competing child support order was entitled to full faith and credit. For this, the Dunn Court had to find which court had continuing exclusive jurisdiction. In In Re: Nathaniel Sybega, Montgomery App. No. 17622, 1999 Ohio App. LEXIS 3822, the appellate court held that under URESA each state has to enforce a child support order made consistently with URESA statutes by another state as long as that state has continuing and exclusive jurisdiction over the issue of child support.

R.C. 3115.06. provides as follow:

> Duties of support applicable under sections 3115.01 to 3115.34, inclusive, of the Ohio Revised Code, are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

The Puerto Rico Court lost its jurisdiction once the Appellant and child moved back to New York, where the Appellee resided. The practical effect of conferring exclusive, continuing jurisdiction on the issuing court is to give that court the power to modify its order, explaining that, even where the issuing tribunal has lost continuing, exclusive jurisdiction, it does not deprive that issuing tribunal "of the power to enforce arrearages that have accrued during the existence of the initial valid order. Puerto Rico does not have jurisdiction to enforce an order that was initially modified and latter terminated by the court that obtained continuing, exclusive jurisdiction over the matter.

PROPOSITION OF LAW II:
THE APPLICATION OF THE UNIFORM INTERSTATE FAMILY SUPPORT
ACT AND THE FEDERAL FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT DO NOT VIOLATE THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND OHIO CONSTITUTION.

In his last proposition of law, the Plaintiff-Appellant argues that application of URESA and FFCCSOA divest the child of her support and

does not protect the best interest of the child. He also states that "Remedial Laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice." In fact, the reversal of the Appellate court decision will promote an opposite result.

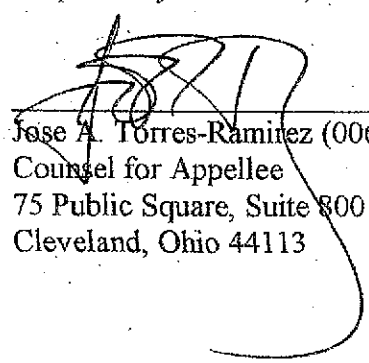
As the record demonstrates, if Ohio registers this order without considering the effects of the New York Court action, not only it will be registering an order based in no jurisdictional authority, but also, it will be registering an order that resulted from the commission of fraud against the judiciary system. The original order was transferred to New York in 1976. New York Courts obtained exclusive and continuous jurisdiction, terminated Puerto Rico's authority in this matter. Also, the New York modified the order from 40 dollars to 25 dollars. The mother waited 25 years and procured a judgment from the Puerto Rico Courts against the father for amounts she knew she was not entitled. She was present at the hearing in the New York Court where the amount was modified to 25 dollars a week from the original 40 dollars a week, but the New York action was never considered and her own Worksheet to Determine Arrears Prepared in Puerto Rico clearly shows that she only mentioned payments made until 1975. The Appellant failed to inform to Puerto Rico the payments the Appellee made in New York.

This conduct constitutes fraud on the court rendering such judgment. Not only she waited all this time, but also failed to mention the fact that she moved to New York in 1976, that she brought the action to the New York court, that New York obtained Jurisdiction in 1976 and that the amount was modified substantially. Now she is using the Puerto Rico Courts to go around what the only court with jurisdiction ordered and is trying to collect the 40 dollars a week, 25 years worth, knowing that this was not correct amount. Also, did not request the extension of child support for disability from birth at the age of eighteen years old, but waited until the child was 31 years old. Because of the Fraud vitiates and makes void everything it touches. This seriously affects the basic fairness, integrity or public reputation of the judicial process.

CONCLUSION

The Appellee respectfully requests this Honorable Court to affirm the Eight District's decision that vacated in part the order for payment or arreages.

Respectfully submitted,



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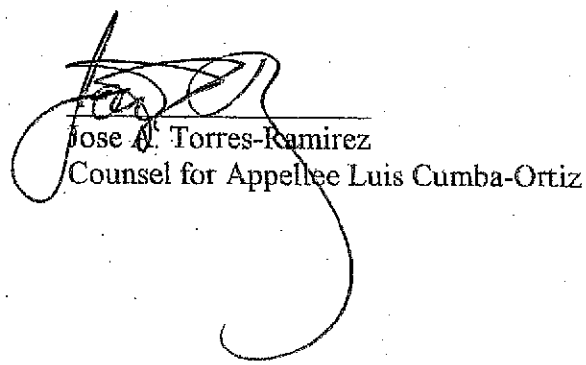
CERTIFICATE OF SERVICE

I hereby certify that one true copy of the foregoing Brief in Opposition was delivered to Cuyahoga County Prosecutor William D. Mason, or his duly authorized representative, this 2nd day of December, 2006.



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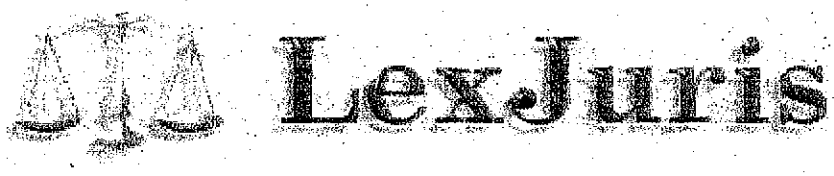

Jurisprudencia del Tribunal Supremo de P.R.

98 DTS 113 APONTE V. BARBOSA 98TSPR113

En el Tribunal Supremo de Puerto Rico

Luz C. Aponte

Demandante-Recurrida

V.

Eliseo Barbosa Dieppa

Demandado-Recurrente

Certiorari

98TSPR113

Número del Caso: CC-97-187

Abogado Parte Peticionaria: Lcdo. Benjamín García González

Abogado Parte Recurrida: Lcda. Norma I. Piñero Cintrón

Abogado del Procurador General: Lcda. Roxana Badillo Rodríguez

Tribunal de Instancia: Superior, Sala de Caguas

Juez del Tribunal de Primera Instancia: Hon. Ramón A. Buitrago Iglesias

Tribunal de Circuito de Apelaciones: Circuito Regional VI

Juez Ponente: Hon. Pesante Martínez

Fecha: 7/24/1998

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AUTENTICA

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Opinión del Tribunal emitida por el Juez Presidente señor ANDRÉU GARCÍA

San Juan, Puerto Rico, a 24 de julio de 1998

Los tribunales de Primera Instancia y Circuito de Apelaciones que intervinieron en este caso emitieron sus dictámenes bajo la vigencia de la Ley Uniforme de Reciprocidad para la Ejecución de Obligaciones sobre Alimentos, Ley Núm. 71 de 20 de junio de 1956, según enmendada, 32 L.P.R.A. §§ 3311-3313bb (1990 y Supl. 1997). Esta ley, sin embargo, fue derogada por la Ley Núm. 180 de 20 de diciembre de 1997 y sustituida por la Ley Interestatal Uniforme de Alimentos entre Parientes, mientras el caso se encontraba pendiente ante esta Corte.

La cronología de los hechos pertinentes exige determinar, en primer lugar, cuál es la legislación aplicable a la controversia presentada. En segundo lugar, y conforme con la legislación aplicable, corresponde resolver si un tribunal de Puerto Rico tiene jurisdicción para modificar una orden de pensión alimentaria emitida por un tribunal estatal de Estados Unidos.

I

El 2 de octubre de 1989, Luz C. Aponte y Eliseo Barbosa Dieppa otorgaron una estipulación en la que Barbosa Dieppa se obligó a pagarles a los dos hijos menores de edad procreados con Aponte una pensión alimentaria de cien dólares semanales. En esa misma fecha, un tribunal del estado de Massachussetts dictó una sentencia mediante la cual aprobó la estipulación y ordenó el cumplimiento de sus términos.

El 3 de marzo de 1995, el estado de Massachussetts presentó ante la Administración para el Sustento de Menores de Puerto Rico (ASUME) una solicitud para que se pusiera en vigor la orden dictada el 2 de octubre de 19891. El 23 de junio de 1995, el Procurador Especial de Relaciones de Familia presentó una querella sobre alimentos recíprocos en representación de Aponte y en beneficio de los hijos menores de ésta y Barbosa Dieppa, en el Tribunal de Primera Instancia, Sala Superior de Caguas.

Barbosa Dieppa fue notificado de la querella y citado a una vista a celebrarse el 19 de marzo de 1996. Se le requirió, además, que presentara una Planilla de Información Personal y Económica, a más tardar, cinco días antes de la celebración de la vista. En cumplimiento de este requerimiento, Barbosa Dieppa presentó la mencionada planilla el 11 de marzo de 1996. En ella informó que tenía una hija menor de edad2 residente en Puerto Rico, además de los dos hijos residentes en Massachussetts, a la cual le enviaba cierta cantidad de dinero.

El 19 de marzo de 1996, se celebró la vista ante la Examinadora de Pensiones Alimenticias. A la vista comparecieron el Fiscal Especial de Relaciones de Familia, en representación de Aponte, y Barbosa Dieppa, por derecho propio. Durante la vista, Barbosa Dieppa anunció que solicitaría una rebaja de la pensión alimentaria. El 25 de marzo siguiente, la Examinadora rindió un informe en el que recomendó el registro en Puerto Rico de la sentencia del tribunal de Massachussetts y el señalamiento de una vista para determinar el pago de la deuda acumulada3.

El 8 de abril de 1996, Barbosa Dieppa presentó formalmente una moción solicitando la rebaja de la pensión alimentaria. Alegó que su situación económica había empeorado y que tenía una hija más a la cual proveerle alimentos.

El 11 de abril de 1996, el tribunal de instancia dictó una resolución y orden mediante la cual se negó a aprobar el informe presentado por la Examinadora. Concluyó que el estado de Massachussetts no había solicitado que se registrara la sentencia dictada el 2 de octubre de 1989, sino que se ejecutara. El tribunal

añadió:

> En algunos estados[]- no luce que Puerto Rico sea uno de ellos - a base de la Ley local,... [el registro] de la sentencia - hacerla local -permitiría que se radi[caran] otras mociones co[r]o[l] arias, i.e. rebaja, relevo, etc. [Si el]... estado inciador [- en este caso, Massachussetts -] no solicit [a]... [el registro] de la sentencia, no la hace local, y priva al estado recurrido [- en este caso, Puerto Rico -], en los casos que su estatuto habilitador[] no lo permit[e],... [de] modificar tal orden. Resolución y orden de 11 de abril de 1996, en la pág. 1.

Consecuentemente, el tribunal de instancia le devolvió el caso a la Examinadora para que, en una nueva vista, llegara a una determinación sobre la solicitud del estado de Massachussetts.

El 22 de octubre de 1996, luego que se celebrara la segunda vista ante la Examinadora4, el tribunal dictó una sentencia en la que adoptó los términos de la dictada por el tribunal de Massachussetts el 2 de octubre de 1989. Mantuvo la pensión de cien dólares semanales e impuso el pago adicional de cinco dólares semanales para la liquidación de los atrasos acumulados. El tribunal ordenó, además, la retención en el origen de los ingresos de Barbosa Dieppa hasta el máximo permitido por la legislación federal aplicable5. En cuanto a la solicitud de rebaja presentada, el tribunal determinó que carecía de jurisdicción para modificar la pensión fijada por el tribunal de Massachussetts. En una resolución y orden adicional, el tribunal fundamentó su determinación en el inciso (e) de la sección 32 de la Ley Uniforme de Reciprocidad para la Ejecución de Obligaciones sobre Alimentos, Ley Núm. 71 de 20 de junio de 1956, según enmendada, 32 L.P.R.A. § 3313w(e) (Supl. 1997), derogada por la Ley Núm. 180 de 20 de diciembre de 1997. Concluyó que Barbosa Dieppa tenía que acudir al foro original y presentar allí su solicitud.

Inconforme, Barbosa Dieppa recurrió el 20 de diciembre de 1996 ante el Tribunal de Circuito de Apelaciones mediante recurso de certiorari. Alegó que el tribunal de instancia había errado 1) al resolver que no podía registrar la sentencia del tribunal de Massachussetts, 2) al no modificar la pensión alimentaria fijada, y 3) al emitir la orden de retención de ingresos en violación de la "Consumer Credit Protection Act", la Ley Orgánica de la Administración para el de Sustento de Menores y la jurisprudencia aplicable. El 13 de marzo de 1997, el Tribunal de Circuito dictó una sentencia mediante la cual, luego de modificar la orden de retención de ingresos6, confirmó el dictamen recurrido7.

Inconforme con este dictamen, Barbosa Dieppa acudió ante esta Corte mediante recurso de certiorari, el cual expedimos el 13 de junio de 1997.

II

El 20 de diciembre de 1997, la Asamblea Legislativa aprobó la Ley Núm. 180 para adoptar en Puerto Rico la "Uniform Interstate Family Support Act" (UIFSA), bajo el nombre de "Ley Interestatal Uniforme de Alimentos entre Parientes" (LIUAP); enmendar la Ley Orgánica de la Administración de Sustento de Menores y derogar la Ley Uniforme de Reciprocidad para la Ejecución de Obligaciones sobre Alimentos.

La UIFSA fue aprobada en agosto de 1992 por la Conferencia Nacional de Comisionados sobre Leyes Uniformes Estatales ("National Conference of Commissioners on Uniform State Laws") - y ratificada en febrero de 1993 por la American Bar Association -, con el propósito de uniformar la legislación aplicable a los procedimientos de alimentos entre los estados adoptantes8,9. Véanse, Uniform Interstate Family Support Act, 9 U.L.A. nota prologal, en las págs. 273-74 (Supl. 1997); Uniform Interstate Family Support Act (1992), 9 U.L.A. § 901, en la pág. 389 (Supl. 1997). La UIFSA fue una respuesta a legislación federal aprobada entre los años 1975 y 1988, mediante la cual el Congreso les exigió a los gobiernos estatales la adopción de normas y procedimientos sobre el sustento de los menores, como requisito de eligibilidad a ciertos programas de ayuda federal. Véase, Uniform Interstate Family Support Act, 9 U.L.A. nota prologal, en la pág. 273 (Supl. 1997). En julio de 1996, la Conferencia Nacional de Comisionados sobre Leyes Uniformes Estatales enmendó la UIFSA con el propósito principal de incorporar guías específicas sobre el procedimiento de retención de ingresos. Esta versión enmendada sustituyó la de 1992. Véase id., en la pág.

274.

El 22 de agosto de 1996, el Congreso federal aprobó la Ley General de Responsabilidad Personal y Oportunidad de Empleos, denominada en inglés como "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (PRWORA), cuya sección 321 les exigió a los estados adoptar la UIFSA como requisito para recibir fondos federales para los programas de sustento de menores y asistencia pública para familias necesitadas. Véase, P.L. 104-193, § 321, 110 Stat. 2105, 2221 (1996), 42 U.S.C.A. § 666(f) (Supl. 1998)10. Para cumplir con este requisito, la Asamblea Legislativa de Puerto Rico adoptó la UIFSA mediante la aprobación de la Ley Núm. 180. Según se consigna en la exposición de motivos de la Ley Núm. 180, "[e]n Puerto Rico, el sesenta y seis por ciento... del presupuesto para la Administración para el Sustento de Menores proviene de fondos federales para asistencia económica a familias necesitadas. La única forma de que el procedimiento de reclamaciones de alimentos interestatales sea efectivo es que sea uniforme"11.

Al adoptar de la UIFSA, pues, Puerto Rico entró en una relación de reciprocidad con los demás estados y territorios adoptantes.

III

A

La LIUAP entró en vigor inmediatamente después de su aprobación el 20 de diciembre de 1997. Véase, Ley Núm. 180 de 20 de diciembre de 1997, art. 2. La sección 904 del artículo 9 de la LIUAP establece:

> El Tribunal General de Justicia será el foro apropiado para los casos interestatales presentados antes del 1ro de julio de 1995 y la Administración para el Sustento de Menores será el foro apropiado para aquellos que surjan a partir de dicha fecha.
>
> Para propósitos de esta Ley, en cualquier acción de alimentos recíprocos presentada con anterioridad al 1ro de julio de 1995, en la cual Puerto Rico actúa como estado recurrido, el Tribunal General de Justicia mantendrá jurisdicción sobre estos casos. El Departamento de Justicia continuará asumiendo la representación legal. El derecho sustantivo y procesal será el que aquí se establece12. (Énfasis suplido).

De acuerdo con esta disposición, la LIUAP constituye el derecho aplicable en todos los casos pendientes, anteriores y posteriores al 1ro de julio de 1995.

El artículo 3 del Código Civil de Puerto Rico preceptúa que "[l]as leyes no tendrán efecto retroactivo, si no dispusieren expresamente lo contrario" y, "[e]n ningún caso podrá el efecto retroactivo de una ley perjudicar los derechos adquiridos al amparo de una legislación anterior". Véase, 31 L.P.R.A. § 3 (1993). Hemos resuelto reiteradamente que esta disposición "sólo tiene el alcance de una regla general de interpretación de estatutos. No es un principio rígido de aplicación absoluta". Warner Lambert Co. v. Tribunal Superior, 101 D.P.R. 378, 385 (1973) (citando a Rodríguez v. Miller, 23 D.P.R. 594, 601 (1916)); véase además, Vélez Soto v. Srio. de Justicia, 115 D.P.R. 533, 542 (1984). La sección 904 de la LIUAP dispone claramente su aplicación retroactiva, por lo que la controversia se reduce a determinar si, en este caso, su efecto retroactivo perjudica algún derecho adquirido al amparo de la legislación anterior.

La LIUAP es un estatuto de carácter esencialmente remedial, cuyo propósito es establecer un sistema procesal uniforme para posibilitar la ejecución de una orden de pensión alimentaria de un estado en otro13, y, como tal, se debe aplicar retroactivamente. Véase, Texas Co. v. Sancho Bonet, 52 D.P.R. 658, 666-67 (1938) (los estatutos relativos a los remedios o procedimientos comienzan a regir retroactivamente); véanse además, Junta de Relaciones del Trabajo de Puerto Rico v. Autoridad de Energía Eléctrica de Puerto Rico, op. del 1ro de abril de 1993, 93 J.T.S. 49, en la pág. 10563; Arbona Hnos. v. Christianson & Co., 26 D.P.R. 284, 291 (1918); Cintrón v. Banco Territorial y Agrícola, 15 D.P.R. 507, 533 (1909); American Railroad Co. of P.R. v. Hernández, 8 D.P.R. 516, 529 (1905). La legislación vigente en Puerto Rico para el 3 de marzo de

1995, cuando el estado de Massachussetts solicitó la ejecución de su sentencia, eran la Ley Uniforme de Reciprocidad para la Ejecución de Obligaciones Alimenticias y la Ley Orgánica de la Administración para el Sustento de Menores, derogada actualmente la primera y enmendada la segunda por la Ley Núm. 18014. En virtud de estos estatutos Barbosa Dieppa no adquirió derecho alguno que el efecto retroactivo de la LIUAP pudiera menoscabar. Barbosa Dieppa apenas pudo haber tenido la expectativa de que su solicitud de rebaja fuera resuelta favorablemente conforme con esa legislación. Presumiendo que ello hubiera sido así, esa expectativa habría constituido a lo sumo "una simple esperanza basada en que la ley seguiría en su forma original...". Rodríguez v. Miller, 23 D.P.R. 594, 602 (1916). "[E]sa mera expectativa jamás puede ser considerada como un derecho adquirido...". Id. Véase además, Vázquez v. Morales, 114 D.P.R. 822, 831 (1983). Nada impide, por lo tanto, la aplicación retroactiva de la LIUAP a la controversia objeto del presente recurso.

B

La LIUAP establece un sistema de una sola orden, el cual se apoya en el principio de jurisdicción continua y exclusiva15 del tribunal que emite una orden de pensión alimentaria o una determinación de filiación, establecido en la sección 205 del artículo 5 - una de las disposiciones esenciales y más importantes del estatuto16 -. Según se explica en el comentario del estatuto modelo:

> La mayoría de los procedimientos bajo RURESA eran de novo. Aun cuando una orden existente de un estado era "registrada" en otro estado, el estado registrador sostenía generalmente el derecho de modificar la orden registrada. Esto significaba que múltiples órdenes de pensión alimentaria podían estar vigentes en varios estados. Bajo la UIFSA, el principio de jurisdicción continua y exclusiva pretende, en la medida de lo posible, reconocer que sólo una orden de pensión alimentaria válida puede estar vigente en un momento dado. Este principio se implementa en las Secciones 204 (reglas para la resolución de acciones pendientes en dos o más estados); 205 y 206 (reglas para determinar cuál tribunal tiene jurisdicción continua y exclusiva sobre la orden de pensión alimentaria); 207 (reconciliación con órdenes de pensión alimentaria dictadas antes de la vigencia de la Ley); y 208 (órdenes múltiples para dos o más familias asistidas por el mismo alimentante). Uniform Interstate Family Support Act, 9 U.L.A. nota prologal, en la pág. 275 (Supl. 1997) (traducción nuestra).

De acuerdo con la sección 205, el tribunal que emite una orden de pensión alimentaria en beneficio de un menor retiene jurisdicción continua y exclusiva sobre la orden mientras alguna de las partes - el alimentante, el alimentista o el menor en cuyo beneficio se ha emitido la orden - continúe residiendo en ese estado, y mientras las partes no consientan por escrito a que el tribunal de otro estado modifique la orden y asuma jurisdicción continua y exclusiva17. Véase, LIUAP, art. 2, § 205(a)(1), (2). De este principio se infiere, pues, que el tribunal que emite una orden de pensión alimentaria en beneficio de un menor pierde su jurisdicción continua y exclusiva de dos formas: (1) cuando todas las partes han dejado de residir en ese estado, o (2) cuando todas las partes han consentido por escrito a que un tribunal de otro estado modifique la orden y asuma jurisdicción continua y exclusiva. Véase, Uniform Interstate Family Support Act, 9 U.L.A. § 205 comentario, en las págs. 285-86 (Supl. 1997). Los tribunales adoptantes están obligados a reconocer la jurisdicción continua y exclusiva del tribunal que emite una orden de pensión alimentaria de acuerdo con la LIUAP, o de una ley sustancialmente similar. Véase, LIUAP, art. 2, § 205(d).

C

Una orden de pensión alimentaria emitida por un tribunal conforme con las disposiciones de la LIUAP se puede ejecutar de tres formas, dos de manera directa y una mediante registro.

De acuerdo con el procedimiento de ejecución directa que establece el artículo 5 de la LIUAP, cuando un tribunal de otro estado ha emitido una orden de retención de ingresos para hacer efectiva una orden de pensión alimentaria, la orden de retención de ingresos emitida en el otro estado "puede ser enviada a la persona o entidad definida como el patrono del alimentante bajo de ley de dicho estado sin tener que

presentar previamente una petición o reclamación comparable o registrar la orden en el tribunal de Puerto Rico". Sec. 501 (énfasis suplido)18.

La orden de retención de ingresos también se puede ejecutar directamente, sin intervención judicial previa ni registro, a través de ASUME19.

La tercera forma de ejecutar una orden de pensión alimentaria de otro estado es registrándola en Puerto Rico. Véase, LIUAP, art. 6, § 601. De acuerdo con el inciso (a) de la sección 603 del artículo 6, "[u]na orden de pensión alimentaria o una orden de retención de ingresos emitida en otro estado se entiende registrada cuando la orden se presenta en el tribunal registrador de Puerto Rico". No obstante, bajo esta sección, el registro de la orden de otro estado en Puerto Rico no implica que se pueda tratar como una orden emitida por un tribunal de Puerto Rico para efectos de modificarla. La orden continúa siendo la orden del estado emisor. Véase, Uniform Interstate Family Support Act, 9 U.L.A. § 603 comentario, en la pág. 304 (Supl. 1997). Consecuentemente, a menos que se cumpla con lo dispuesto en las secciones 609 a la 612, "un tribunal de Puerto Rico reconocerá y ejecutará una orden registrada, pero no podrá modificarla si el tribunal que ha emitido la misma tenía jurisdicción". Id., § 603(c) (énfasis suplido)20.

Para que un tribunal pueda modificar la orden de pensión alimentaria para un menor21 emitida por el tribunal de otro estado, el estado que pretende la modificación tiene que tener jurisdicción personal sobre las partes y cumplir con los requisitos establecidos en el artículo 6 de la ley. Véase, Uniform Interstate Family Support Act, 9 U.L.A. § 205 comentario, en la pág. 286 (Supl. 1997).

La parte o la agencia de sustento de menores que solicita la modificación o la ejecución y la modificación de una orden de pensión alimentaria emitida por el tribunal de otro estado, tiene primero que registrarla en Puerto Rico, si ésta no ha sido registrada ya, siguiendo el procedimiento establecido en las secciones 601 a la 603 de la ley. Véase, LIUAP, § 609. Una vez registrada la orden, los tribunales de Puerto Rico tienen autoridad para ejecutarla como si se tratara de una orden emitida por un tribunal de Puerto Rico, pero no para modificarla, salvo que se cumplan los requisitos que establece la sección 611. Véase id., § 610.

La sección 611 del artículo 6 de la LIUAP establece los siguientes requisitos para que el foro local pueda modificar una orden de pensión alimentaria dictada por un tribunal de otro estado:

> (a) Luego de que se registra en Puerto Rico la orden de pensión alimentaria de un menor emitida en otro estado, el tribunal recurrido de Puerto Rico puede modificar dicha orden únicamente en el caso en que la Sección 613 de esta Ley no sea aplicable[,] y luego de cumplir con el requisito de notificación y vista[,] determina que:
>
> (1) los siguientes requisitos se han cumplido:
>
> (i) el menor, el alimentista y el alimentante no residen en el estado que emite la orden;
>
> (ii) el peticionario, quien no es residente de Puerto Rico, solicita que se modifique la orden; y
>
> (iii) el demandado está sujeto a la jurisdicción del tribunal de Puerto Rico; o
>
> (2) el menor o una de las partes está sujeto a la jurisdicción sobre la persona del tribunal de Puerto Rico y todas las partes han presentado por escrito su consentimiento en el estado que emitió la orden para que el tribunal de Puerto Rico pueda modificar la orden de pensión alimentaria y asumir la jurisdicción continua y exclusiva sobre la misma. Sin embargo, si el estado que emite la orden es de una jurisdicción extranjera que no ha aprobado una ley o establecido procedimientos sustancialmente similares a los procedimientos bajo esta Ley, el consentimiento que de otra manera hubiera sido requerido de una persona que resida en Puerto Rico, no se requerirá para que el tribunal asuma jurisdicción para modificar la orden de pensión alimentaria del menor[illegible]

La sección 613, por su parte, establece lo siguiente en cuanto a la jurisdicción para modificar la orden de pensión alimentaria de un menor emitida por un tribunal de otro estado:

> (a) Cuando todas las partes residen en Puerto Rico y el menor no reside en el estado que emitió la orden, un tribunal de Puerto Rico tiene jurisdicción para ejecutar y modificar la orden de pensión alimentaria del estado que la emitió en un procedimiento para registrar dicha orden.
>
> (b) Un tribunal de Puerto Rico ejerciendo su jurisdicción bajo esta Sección deberá aplicar las disposiciones de los Artículo 1 y 2 de esta Ley y este Artículo y la ley procesal y sustantiva de Puerto Rico, al procedimiento para la ejecución o modificación. Los Artículo 3, 4, 5, 7 y 8 de esta Ley no aplican.

D

Para resolver si procede la solicitud de rebaja presentada por Barbosa Dieppa, debemos determinar primero si aplica la sección 613. El inciso (a) de esta sección establece claramente que un tribunal de Puerto Rico tiene jurisdicción para modificar la orden de pensión alimentaria de otro estado, sólo "[c]uando todas las partes residen en Puerto Rico y el menor no reside en el estado que emitió la orden". La actuación del tribunal de Puerto Rico tiene que ocurrir, además, dentro del procedimiento para registrar la orden emitida por el otro estado. Véase id.

Según surge de varios de los documentos en el expediente de este Tribunal, los hijos menores de Barbosa Dieppa, en cuyo beneficio el tribunal de Massachussetts dictó la orden de pensión alimentaria el 2 de octubre de 1989, aún residen en ese estado junto a su madre, la señora Aponte23. Barbosa Dieppa, sin embargo, reside en Puerto Rico24. Por otro lado, no constan en el expediente los documentos de las partes consintiendo a que el tribunal de Puerto Rico modifique la orden emitida por el tribunal de Massachussetts y asuma la jurisdicción continua y exclusiva sobre ella.

Debido a que el tribunal del estado de Massachussetts aún retiene jurisdicción continua y exclusiva sobre la orden de pensión alimentaria que emitió el 2 de octubre de 1989, en beneficio de los hijos de Barbosa Dieppa, los tribunales de Puerto Rico carecen de autoridad para modificarla25. Para lograr su propósito, Barbosa Dieppa tendría que cumplir con el inciso (2) de la sección 611 del artículo 6 de la LIUAP y lograr que las demás partes prestaran su consentimiento escrito para que un tribunal de Puerto Rico modifique la orden emitida por el tribunal de Massachussetts y asuma jurisdicción continua y exclusiva sobre ella. De lo contrario, tendría que presentar su solicitud ante el tribunal de Massachussetts que emitió la orden.

Esta solución pudiera parecer errónea e injusta. Se podría plantear que la LIUAP dispone los medios para atender la solicitud de Barbosa Dieppa. Se podría argumentar, en primer lugar, que el peticionario tiene una defensa válida frente a la ejecución de la orden dictada por el tribunal de Massachussetts y, en segundo lugar, que es posible remitir el asunto al tribunal de Massachussetts para que éste considere la solicitud de rebaja de la pensión impuesta.

Respecto al primer planteamiento la sección 607 del artículo 6 de la LIUAP establece:

> (a) Una parte que objete la validez o la ejecución de una orden registrada, o que solicita que se deje sin efecto el registro de la misma, tendrá el peso de la prueba de una o más de las siguientes defensas:
>
> . . . .
>
> (5) existe una defensa en derecho bajo alguna ley de Puerto Rico al remedio solicitado. . . .

Esta disposición, sin embargo, no aplica en este caso, ya que Barbosa Dieppa acepta expresamente la validez de la sentencia y la orden dictadas por el tribunal de Massachussetts. Reconoce, además, que

durante los procedimientos ante ese foro se le garantizó su derecho a un debido procedimiento de ley. Véase, Solicitud de certiorari, en la pág. 5.

Pero aun presumiendo que no aceptara su validez, Barbosa Dieppa no tendría defensa alguna contra la ejecución de la orden dictada. El cambio sustancial en la capacidad económica del alimentante, si bien constituye una razón válida que justifica la reducción de una pensión ya fijada, véanse, Valencia, Ex parte, 116 D.P.R. 909, 913 (1986); Negrón Rivera y Bonilla, Ex parte, 120 D.P.R. 61, 78 (1987); López v. Rodríguez, 121 D.P.R. 23, 32 (1988), no constituye una defensa válida frente a su incumplimiento. Prueba de ello es que, según hemos resuelto, la reducción de una pensión alimentaria, cuando procede, no es efectiva retroactivamente, sino - en ausencia de una situación extraordinaria en la que el alimentante pueda demostrar que por razón de una enfermedad o accidente incapacitante le fue imposible presentar oportunamente la moción correspondiente26 - a partir de la fecha de radicación de la solicitud. Véanse, Valencia, Ex parte, supra, en la pág. 916; López v. Rodríguez, supra, en las págs. 35-36; Rivera Maldonado v. Cabrera Olivera, op. de 2 de marzo de 1992, 92 J.T.S. 29, en las págs. 9321-2227.

En cuanto a la posibilidad de remitir el asunto al tribunal de Massachussetts, la sección 206 del artículo 2 de la LIUAP establece:

> (a) El tribunal de Puerto Rico podrá servir como tribunal iniciador para solicitar a un tribunal de otro estado que ejecute o modifique una orden de pensión alimentaria emitida en ese estado.

Esta disposición es un reconocimiento del principio de jurisdicción continua y exclusiva del tribunal que emite una orden de pensión alimentaria en beneficio de un menor. Véase, Uniform Interstate Family Support Act, 9 U.L.A. § 206 comentario (Supl. 1997). Si bien nos faculta a solicitarle al tribunal de Massachussetts la modificación de la orden de pensión alimentaria, no nos faculta a no reconocer la vigencia de esa orden en Puerto Rico mientras se dilucida finalmente el asunto28.

E

La orden de pensión alimentaria en este caso se rige, además, por la "Full Faith and Credit for Child Support Orders Act" (FFCCSOA), 28 U.S.C.A. § 1738B (Supl. 1998)29,30. De acuerdo con las disposiciones de este estatuto, los tribunales de Puerto Rico carecen de jurisdicción para enmendar la orden emitida por el tribunal de Massachussetts en este caso por la misma razón que no la tienen bajo la LIUAP.

En el historial del proyecto del Senado Núm. 922, el cual se convirtió en la FFCCSOA, se discuten algunos de los problemas relacionados con la falta de cumplimiento con las órdenes de pensión alimentaria de los distintos estados en Estados Unidos. Se consigna que uno de los problemas principales surge cuando el alimentante que no tiene la custodia de los hijos alimentistas se muda a otro estado y solicita allí que se reduzca la cantidad establecida en la orden de pensión alimentaria original. Según se discute en el informe:

> Because child support orders are not entitled to full faith and credit, the courts of the other state can, and frequently do, reduce the amount of support payable under the original court order. This lea[v]es a custodial parent with only two choices. He or she can choose to accept the ruling, and do without the full amount of child support, often at great hardship to the children. Or, he or she can challenge the ruling in the out-of-state court. Assuming the custodial partner learns of the modification in time to appeal, this requires paying money for court costs, attorney's fees, and travel to the new state, all without any guarantee of success. Obviously, neither of these solutions is adequate. S. 922 is designed to remedy that problem.
>
> If a non-custodial parent wishes to file for a reduction in child support payments, then he or she must do so in the state that originally issued the order. This will insure that the custodial parent is given notice of the proposed modification, as well as an opportunity to

oppose the modification if he or she wishes. S. Rep. No. 103-361, en las pág. 4-5 (1994), reimpreso en 1994 U.S.C.C.A.N. 3259, 3260-61 (énfasis suplido).

La FFCCSOA le exige a cada estado poner en vigor, de acuerdo con sus términos, una orden pensión alimentaria para un menor dictada en otro estado. Véase, 28 U.S.C.A. § 1738B(a)(1) (Supl. 1998). La ley le prohibe asimismo a los tribunales de un estado modificar una orden de pensión alimentaria para un menor dictada por el tribunal de otro estado, véase id., § (a)(2), salvo de conformidad con las subsecciones (e), (f) e (i). Estas disposiciones establecen:

> (e)... A court of a State may modify a child support order issued by a court of another State if--
>
> (1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and
>
> (2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's home State or the residence of any individual contestant; or
>
> (B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.
>
> (f)... If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:
>
> (1) If only 1 court has issued a child support order, the order of that court must be recognized.
>
> . . . .
>
> (5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d)[31].
>
> . . . .
>
> (i)... If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification. 28 U.S.C.A. § 1738B(e), (f), (i) (Supl. 1998).

La solución del problema que plantea la petición de rebaja de pensión presentada por Barbosa Dieppa bajo estas disposiciones es idéntica a la solución del problema bajo las disposiciones de la LIUAP32: debido a que el tribunal de Massachussetts tiene aún la jurisdicción continua y exclusiva sobre la orden de pensión alimentaria, los tribunales de Puerto Rico carecen de jurisdicción para modificarla.

Se podría cuestionar también la corrección de nuestra solución bajo la FFCCSOA. Se podría plantear, en primer lugar, que la FFCCSOA no continúa vigente en jurisdicciones que, como Puerto Rico, han adoptado la UIFSA en cumplimiento del mandato federal preceptuado en la sección 321 de la PRWORA, 42 U.S.C.A. § 666(f) (Supl. 1998). En segundo lugar, se podría argumentar que aun presumiendo la vigencia de la FFCCSOA, ésta contiene disposiciones que permiten atender la solicitud de Barbosa Dieppa.

En cuanto a las posibles inconsistencias entre la FFCCSOA y la UIFSA hay que reconocer efectivamente que ambos estatutos contienen disposiciones que pudieran estar en conflicto. Véase, e.g., Patricia Wick Hatamyar, Critical Applications and Proposals for Improvement of the Uniform Interstate Family Support Act and the Full Faith and Credit for Child Support Orders Act, 71 St. John's L. Rev. 1 (1997). No obstante, no

nos corresponde resolver esas posibles contradicciones, particularmente cuando, respecto al asunto que nos ocupa, no existe conflicto entre ambos estatutos. Véase id., en las págs. 37-38.

En cuanto a la posibilidad de atender la solicitud de rebaja presentada por Barbosa Dieppa conforme con las disposiciones de la FFCCSOA, cabe señalar que el inciso (h) de ese estatuto ordena la aplicación de la ley del foro a los procedimientos para modificar una orden de pensión alimentaria para un menor. Véase, 28 U.S.C.A. § 1738B(h) (Supl. 1998). No obstante, la ley del foro en este caso es la UIFSA, según adoptada en Puerto Rico - es decir, la LIUAP - y, según hemos explicado, bajo este estatuto, la solicitud de Barbosa Dieppa es improcedente.

Se dictará la sentencia que corresponda de conformidad con los fundamentos expuestos anteriormente.

José A. Andréu García

Juez Presidente

SENTENCIA

San Juan, Puerto Rico, a 24 de julio de 1998

Por los fundamentos expuestos en la Opinión que antecede, la cual se hace formar parte integrante de la presente, se confirma la sentencia del Tribunal de Circuito de Apelaciones de 13 de marzo de 1997.

Lo pronunció y manda el Tribunal y certifica la Secretaria del Tribunal Supremo. El Juez Asociado señor Fuester Berlingeri emitió una Opinión Disidente.

Isabel Llompart Zeno

Secretaria del Tribunal Supremo

Opinión Disidente emitida por el Juez Asociado señor FUSTER BERLINGERI

San Juan, Puerto Rico, a 24 de julio de 1998.

El caso de autos presenta una situación realmente singular. Tanto el foro de instancia como el foro apelativo denegaron el remedio solicitado por el peticionario, pero admitieron a la vez que el dictamen que emitían **era claramente injusto**. Se lamentaron ambos tribunales que la legislación aplicable les impidiese resolver a favor del peticionario, por lo que expresaron igualmente que sus respectivos dictámenes les dejaba "un amargo sabor en la boca de tener que tomar una determinación...que choca con nuestro sentido de justicia sustancial."

En vista de lo anterior, este Foro **expidió** el recurso del peticionario y **todos** los Jueces que intervinimos estuvimos de acuerdo que era menester examinar si en efecto la legislación en cuestión aparejaba la injusticia aludida. En particular,

resolvimos indagar si cabía alguna interpretación de dicha legislación que permitiese atenuar la supuesta rigidez de ésta y así modificar los anómalos dictámenes de los tribunales de instancia y apelativo.

Como demostraré más adelante, existe claramente un modo razonable de cumplir el propósito que nos motivó a expedir este recurso. Sin embargo, una mayoría de este Tribunal ahora opta por un curso de acción distinto al acordado originalmente, **que perpetúa innecesariamente la injusticia que queríamos conjurar**. La mayoría hace caso omiso de unas disposiciones de ley que preceptúan un resultado muy distinto al que ésta decreta. Sigue una ruta decisoria patentemente estrecha, que considero desacertada en Derecho y singularmente injusta. Por todo ello, disiento. Veamos.

I

En esencia, los hechos pertinentes del caso de autos son los que se narran a continuación.

Mientras trabajaba en Estados Unidos, un obrero asalariado acordó pagarle a los dos (2) hijos que tenía entonces, una pensión alimentaria de $429.00 mensuales. En virtud de ello, el 2 de octubre de 1989, un tribunal de Massachusetts dictó una sentencia por estipulación para fijar así la pensión aludida.

Seis años más tarde, a instancias del estado de Massachusetts, el Procurador de Relaciones de Familia de Puerto Rico presentó una querella judicial contra el peticionario, quien ahora residía en Puerto Rico, por sus atrasos en los pagos de la pensión en cuestión. Este respondió a la querella indicando que su situación económica y familiar **había cambiado sustancialmente**, debido a que actualmente tenía una tercera hija a quien tenía que alimentar también, y debido además a que los ingresos totales con que contaba ahora se habían reducido y sumaban sólo $656.00 mensuales. Solicitó, por lo tanto, que conforme a sus circunstancias actuales, se autorizara una rebaja en la pensión para sus dos hijos en Massachusetts.

La solicitud de rebaja fue referida a la Oficial Examinadora de Pensiones Alimenticias, quien examinó el asunto detenidamente, y conforme las normas pertinentes, determinó que el peticionario sólo tenía medios para pagarle $172.00 mensuales a los hijos que residían en Massachusetts. A pesar de esta determinación, el foro de instancia entendió que la legislación vigente entonces, la Ley Uniforme de Reciprocidad para la Ejecución de Obligaciones sobre Alimentos, en adelante Ley Uniforme de Reciprocidad, **le impedía modificar la pensión** fijada por el tribunal de Massachusetts. Concluyó que para ello, el empobrecido peticionario **tenía que trasladarse a Massachusetts y presentar su solicitud en el foro que fijó la pensión originalmente**. Consecuentemente, el foro de instancia mantuvo en vigor la pensión estipulada en Massachusetts; le impuso al peticionario el pago adicional de $22.00 mensuales para la liquidación de los atrasos acumulados; y le ordenó la correspondiente retención en el origen de los ingresos del peticionario para el pago de la pensión; todo ello **a la vez que reconoció expresamente** que el peticionario no tenía los medios para su propio sostén y el de la tercera hija y para satisfacer también la pensión alimentaria referida.

El Tribunal de Circuito de Apelaciones confirmó esencialmente el dictamen de instancia. Sostuvo que la Ley Uniforme de Reciprocidad requería el dictamen en cuestión.

Fue en este contexto que decidimos expedir el recurso de certiorari solicitado ante nos por el peticionario. Como se ha indicado ya, nos pareció que la carga impuesta al peticionario era obviamente **injusta e irrazonable**.

II

La Ley Uniforme de Reciprocidad, 32 L.P.R.A. secs. 3311 *et seq.*, que estaba en vigor cuando los foros de instancia y apelativo emitieron sus respectivos dictámenes en el caso de autos, fue aprobada por la Asamblea Legislativa de Puerto Rico el 20 de junio de 1956, con el propósito de fortalecer el pago de obligaciones alimentarias en aquellos casos en que el alimentante residía en Puerto Rico y el alimentista residía en alguno de los estados de la Unión norteamericana, y viceversa. Se trataba de una legislación de reciprocidad, que perseguía hacer uniforme la ejecución de las obligaciones alimentarias entre las jurisdicciones estatales de los Estados Unidos y el Estado Libre Asociado de Puerto Rico. Robles v. Otero de Ramos, 127 D.P.R. 911 (1991). Dicha legislación no era otra cosa que la versión local de un proyecto de

y modelo, propuesto por la *National Conference of Commissioners On Uniform State Laws* en 1952, que ıe adoptado en cuarenta y siete (47) jurisdicciones estatales norteamericanas. Véase, 9 *Uniform Laws nnotated* 333 (1988).

uando este Tribunal expidió el recurso del peticionario el 13 de junio de 1997, la referida Ley Uniforme de .eciprocidad estaba vigente. Sin embargo, seis meses después de expedido el recurso, el 20 de diciembre e 1997, la Asamblea Legislativa **derogó** la Ley Uniforme de Reciprocidad y la sustituyó por una nueva Ley ıterestatal Uniforme de Alimentos entre Parientes, en adelante L.I.U.A.P., que es la que está vigente al ıomento en que resolvemos el caso de autos, y, por tanto, la que rige la controversia ante nos, por propio ıandato de dicha ley, como bien señala la mayoría en su opinión.

Mediante la L.I.U.A.P. se adoptó en Puerto Rico la *Uniform Interstate Family Support Act* (U.I.F.S.A.), otro ıroyecto de ley modelo propuesto en 1996 por el *National Conference of Commissioners on Uniform State .aws,* a los fines de mejorar la legislación uniforme interestatal referente al sustento de menores. La J.I.F.S.A. se formuló con el propósito específico de sustituir estatutos como la Ley Uniforme de Reciprocidad, y así fortalecer los mecanismos para la ejecución interestatal de las obligaciones ılimentarias. La U.I.F.S.A. ya ha sido adoptado por 48 estados y por el Distrito de Columbia. Véase, Historial de la U.I.F.S.A., 9 U.L.A. 274 (Supl. 1997), y Murphy v. Murphy, 1998 W.L. 262805 (1998). Por ser a L.I.U.A.P. esencialmente una traducción del U.I.F.S.A., sus secciones adoptan y reproducen ntegramente el texto de las disposiciones equivalentes en la U.I.F.S.A.

Uno de los rasgos principales de la U.I.F.S.A., y por tanto de la L.I.U.A.P., es que establece la vigencia en a jurisdicción a la que se recurre, de las órdenes judiciales de la jurisdicción que las emitió, aunque **no exista reciprocidad** entre una jurisdicción y la otra. Esta innovación es parte del esquema de la nueva egislación para fortalecer la ejecución de las órdenes alimentarias emitidas por el foro que fijó la pensión ɔriginalmente.

Otro rasgo central del nuevo esquema aludido es que se expande significativamente el ámbito de la jurisdicción del tribunal que emitió inicialmente la pensión alimentaria. En efecto, la jurisdicción de dicho foro sobre la pensión alimentaria es continua y exclusiva, **excepto en los casos expresamente dispuestos en la nueva legislación**. Si bien la U.I.F.S.A., como su versión local, la L.I.U.A.P., persiguen reducir a un mínimo las facultades de otros tribunales para **modificar** las pensiones fijadas por el foro que las ordenó originalmente, **tal facultad continúa existiendo en determinadas circunstancias**. En el informe explicativo que acompaña la ley modelo (U.I.F.S.A.) se indica lo anterior, con entera claridad:

> "**Except for narrowly defined fact circumstances**, under U.I.F.S.A. the only tribunal that can modify a support order is the one having continuing, exclusive jurisdiction over the order". (9 U.L.A. pág. 277, Supl. 1997). (Enfasis suplido).

Una de las circunstancias aludidas, cuando por excepción se puede modificar la orden judicial de alimentos original, es la que se establece en la sección 607 del Artículo 6 de la L.I.U.A.P., que dispone así en lo pertinente:

> **Sección 607. Objeción al registro o ejecución**
>
> (a) Una parte que objete la validez o ejecución de una orden registrada, o que solicita que se deje sin efecto el registro de la misma, tendrá el peso de la prueba de una o más de las siguientes defensas:
>
> [...]
>
> > (5) existe una defensa en derecho bajo alguna ley de Puerto Rico al remedio solicitado.

[...]

(B) Si una parte presenta evidencia estableciendo total o parcialmente una defensa bajo la subsección (a), un tribunal podrá paralizar la ejecución de la orden registrada, continuar el procedimiento que le permita la producción adicional de evidencia pertinente y emitir otras órdenes que estime apropiadas. [...]

Como puede observarse, el artículo citado de la L.I.U.A.P. autoriza de modo claro y expreso a los tribunales de Puerto Rico a acceder a una solicitud como la del peticionario en el caso de autos, si tal solicitud procede al amparo del ordenamiento jurídico de Puerto Rico. Es decir, el peticionario puede objetar la ejecución de la orden judicial que originalmente fijó la pensión alimentaria, **si existe en nuestra jurisdicción alguna defensa** que pueda oponerse a la ejecución de dicha orden que procura la jurisdicción que la emitió.

Es menester señalar que el propio Tribunal Supremo del estado de Massachusetts ha reconocido que bajo la sección 6-607 del U.I.F.S.A., a la que corresponde la disposición antes citada de nuestra L.I.U.A.P., una parte como el peticionario de autos puede tener defensas válidas que oponer a la solicitud de ejecución instada por la jurisdicción que emitió la pensión alimentaria. Child Support Enforcement Division of Alaska v. Brenckle, 424 Mass. 214, 675 N.E. 2d 390, 221 y 394 (1997).

La cuestión precisa ante nos bajo la L.I.U.A.P., pues, es si existe en nuestro derecho alguna defensa que ampare al peticionario. Pasemos a examinar este asunto, que es la cuestión verdaderamente medular en el caso de autos.

III

Como se sabe, la cuestión de los alimentos entre parientes en Puerto Rico está fundamentalmente regulada por nuestro Código Civil. Respecto a lo que aquí nos concierne, el Artículo 146 de ese Código, 31 L.P.R.A. sec. 565, dispone lo siguiente:

Cuantía de alimentos

La cuantía de los alimentos será proporcionada a los recursos del que los da y a las necesidades del que los recibe, y se reducirán o aumentarán en proporción a los recursos del primero y a las necesidades del segundo.

Conforme a lo dispuesto en el artículo referido, es principio general de nuestro ordenamiento jurídico que la cuantía de los alimentos debe ser proporcional al estado de necesidad del alimentista y a la condición económica del alimentante obligado. Guadalupe Viera v. Morell, 115 D.P.R. 4, 14 (1983). En nuestro ordenamiento jurídico, es claro, además, que luego de aprobado un convenio o estipulación sobre pensión alimentaria, éste puede modificarse si ocurre "un cambio sustancial en las circunstancias que dieron lugar u originaron el mismo". Negrón Rivera y Bonilla, Ex parte, supra, 120 D.P.R. 61 (1987). "La jurisprudencia consistentemente ha reconocido la facultad judicial para modificar los decretos judiciales previos sobre pensiones alimenticias según lo requieran los cambios de circunstancias que así lo ameriten". Torres Peralta, La Nueva Ley Especial de Sustento de Menores, 49 Rev. Col. Abogados 115 (1988). Véanse, además, Valencia, Ex parte, 116 D.P.R. 909 (1986); Guadalupe Viera v. Morell, supra. Reiteradamente, hemos resuelto que una resolución o sentencia imponiendo el pago de alimentos siempre está sujeta a ser modificada o reajustada al demostrarse que las condiciones han variado. García v. Acevedo, 78 D.P.R. 611, 617 (1955). Ello es así aún cuando los alimentos hayan sido estipulados. Brea v. Pardo, 113 D.P.R. 217 (1982).

Con arreglo a la sección 607(a)(5) y (b) del Artículo 6 de la nueva L.I.U.A.P., supra, estos principios

normativos firmemente arraigados en nuestro Código Civil y en nuestra jurisprudencia no quedan sin efecto en el caso de sentencias foráneas sobre alimentos. Dicha ley se estableció esencialmente para frenar la evasión del cumplimiento de la obligación de proveer alimentos, que ocurre cuando el obligado abandona deliberadamente la jurisdicción que le impuso el pago de alimentos, para evadir dicho pago. Su objetivo es asegurar que se pongan en vigor en el nuevo lugar de residencia del obligado las órdenes sobre alimentos emitidas en otros estados de la Unión americana. Tal objetivo, sin embargo, no es incompatible con la posibilidad de alterar judicialmente algún dictamen foráneo fijando alimentos, **cuando está ausente el propósito de evadir el pago de la pensión impuesta y se acredita, a satisfacción del tribunal de Puerto Rico, que ha ocurrido cambios sustanciales en las circunstancias del alimentante que le impiden descargar su obligación de alimentar** del modo en que había sido impuesta tal obligación inicialmente.

Existe, pues, una defensa válida en nuestro ordenamiento jurídico que ampara al peticionario, que la mayoría no considera de modo alguno en su obturado dictamen.

Es menester resaltar que la L.I.U.A.P. también provee **otro medio** para atender la solicitud de rebaja de pensión del peticionario, que la mayoría tampoco considera de modo alguno, y que serviría para atenuar la severidad del gravoso e injusto dictamen que pesa sobre el peticionario. Dicha ley hace posible que el tribunal de Puerto Rico remita al de Massachusetts el asunto que nos concierne, y que solicite de éste el ajuste que proceda en la pensión que debe pagar el peticionario, conforme a sus circunstancias económicas actuales y al hecho de que tiene otro hijo más que debe alimentar también. Esta alternativa surge claramente de las siguientes disposiciones de la L.I.U.A.P., que la mayoría omite mencionar en su constrictiva opinión:

> **Sección 206**
>
> (a) El tribunal de Puerto Rico podrá servir como tribunal iniciador para solicitar a un tribunal de otro estado que ejecute **o modifique** una orden de pensión alimentaria emitida en ese estado. (Enfasis suplido).
>
> **Sección 306. Tribunal sin competencia**
>
> Si una petición o reclamación comparable es recibida por un tribunal sin competencia en Puerto Rico, éste remitirá la petición y los documentos que la acompañan al tribunal apropiado en Puerto Rico **o en otro estado** y notificará al peticionario el lugar y la fecha en que remitieron los documentos. (Enfasis suplido).

Esta alternativa le evitaría al peticionario, que es evidentemente una persona de ingresos limitados, tener que gastar dinero para trasladarse a Massachusetts para presentar allí su solicitud de ajuste en la pensión alimentaria.

En resumen, pues, la L.I.U.A.P. contiene varias disposiciones que ofrecen **alternativas** para atender la razonable solicitud del peticionario de que se le ajuste su pensión alimentaria. Tiene contenido suficiente para que pueda hacerse cierta aquí la visión que expresáramos en Negrón Rivera y Bonilla, Exparte, supra, a la pág. 73, de que "cuando de hacer justicia se trata, especialmente en áreas de gran interés público, no hay moldes técnicos que limiten o aprisionen los remedios justos."

IV

Debe señalarse que tampoco es correcto el pronunciamiento de la mayoría de que la ley federal conocida como F.F.C.C.S.O.A., la Full Faith and Credit for Child Support Orders Act, 28 U.S.C.A. 1738B, también requiere que los tribunales de Puerto Rico denieguen la solicitud del peticionario de que se ajuste su obligación alimentaria a sus circunstancias actuales. Esta postura de la mayoría no es cónsona con el historial ni con el texto de la aludida legislación federal. Aquí, de nuevo, la mayoría hace caso omiso a las

razonables aberturas que existen en Derecho para conjurar una patente injusticia como la del caso de autos.

En primer lugar, es muy cuestionable que la F.F.C.C.S.O.A. continúe teniendo vigencia en jurisdicciones como Puerto Rico, que han adoptado ya la U.I.F.S.A. Nótese que la F.F.C.C.S.O.A. fue aprobada por el Congreso en 1994, con el mismo propósito que persigue la U.I.F.S.A.: impedir que mediante el cambio de residencia se deje de pagar una obligación alimentaria; asegurar que una jurisdicción ponga en vigor una orden de pensión para un menor dictada en otro estado. Véase, U.S. Code Congressional And Administrative News, vol. 5, 1994, págs. 3259-3265. Pero resulta que posteriormente, en 1996, el Congreso aprobó **otra legislación sobre este mismo asunto**, que requería que la U.I.F.S.A. fuese adoptada en las jurisdicciones estatales de Estados Unidos a más tardar para el 1 de enero de 1998. 42 U.S.C.A. sec. 666 (f). Tratándose de la legislación más reciente sobre un mismo asunto, es evidente que prevalece la legislación del 1996, que es la que requiere la adopción de la U.I.F.S.A. como medio más eficaz de lograr el propósito congresional. En efecto, fue precisamente en virtud del mandato de la referida legislación federal de 1996, que la Asamblea Legislativa de Puerto Rico adoptó la U.I.F.S.A. en diciembre de 1997. Véase, la Exposición de Motivos de la Ley Núm. 80 de 20 de diciembre de 1997.

Nótese, además, que suponer que la F.F.C.C.S.O.A. continua vigente junto con la U.I.F.S.A. daría lugar a un conflicto de mandatos federales. Ello es así porque aun cuando ambas piezas legislativas tienen el mismo propósito, y ambas responden a un mandato congresional, las leyes no son idénticas en su contenido. La U.I.F.S.A. regula el asunto en cuestión de manera más detallada y abarcadora que la F.F.C.C.S.O.A. Por ello, si se pretende que ambas apliquen a la vez, se crearía la insostenible situación de que el foro judicial tenga la obligación de conceder un remedio concreto bajo una ley, y la obligación de conceder otro remedio concreto **distinto** bajo la otra ley. El conflicto aludido sólo puede evitarse reconociendo que prevalece la U.I.F.S.A., que es la que incorpora el mandato congresional más reciente y la que más eficazmente atiende el propósito congresional.

Por otro lado, debe destacarse también que aun en el supuesto de que la F.F.C.C.S.O.A. continúe vigente, dicha ley por sus propios términos contiene disposiciones que permiten atender situaciones como la del caso de autos. El inciso (h) de este estatuto federal expresamente dispone lo siguiente:

(h) Choice of law.-

1. **In general.-**In a procceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

2. **Law of State of issuance of order.-**In interpreting a child support order including the duration of current payment and other obligations of support, a court shall apply the law of the State of the court that issued the order.

3. **Period of limitation.-**In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation. (Enfasis suplido).

Conforme a este inciso, los tribunales de Puerto Rico deben aplicar las normas **de nuestro propio ordenamiento** en procedimientos instados para **poner en vigor** una orden judicial de alimentos, lo que permitiría aplicar en este caso la normativa antes reseñada que se origina en el Artículo 146 del Código Civil de Puerto Rico, supra. Si bien es cierto que dicho inciso también dispone que al **interpretar** la orden de alimentos se ha de seguir la ley del foro que la emitió, ello no altera en nada lo que resultaría de aplicar la normativa puertorriqueña, debido a que el estado de Massachusetts tiene una normativa similar a la nuestra, en lo que se refiere al asunto en cuestión. El resultado sería el mismo bajo cualquiera de los dos regímenes legales.

Debe señalarse que el inciso (h) de la F.F.C.C.S.O.A. aludido ha sido interpretado según lo hacemos aquí,

no sólo por juristas que son especialistas en estos asuntos, sino además por otros foros judiciales. Véase, Hatamyar, Critical Applications...of U.I.F.S.A. and F.F.C.C.S.O.A., 71 St. John's L. Rev. 1, 29 (1997); y la jurisprudencia allí citada.

V

En resumen, pues, ni nuestra propia L.I.U.A.P. ni la F.F.C.C.S.O.A. federal constituyen camisas de fuerza que requieran la injusta y absurda decisión de que el peticionario pague una pensión que está más allá de sus medios económicos. Dichos estatutos no se legislaron para atender situaciones como la del caso de autos, **que no presenta el móvil de evasión de responsabilidad por medio de un cambio de residencia**. La situación del caso de autos no constituye de modo alguno el mal que se pretende conjurar a través de las leyes referidas. Por el contrario, este caso presenta más bien una circunstancia de excepción, derivada de la equidad, que ha sido reconocida jurídicamente tanto de manera general[34], como del modo concreto que lo hace el Artículo 146 del Código Civil antes mencionado. Además, como se ha demostrado ya, las leyes referidas pueden interpretarse razonablemente, conforme a conocidos principios de hermeneútica, para atender el reclamo del peticionario. La mayoría en efecto hace caso omiso de las disposiciones de las leyes aludidas, discutidas antes en esta opinión, que podrían interpretarse para hacerle justicia al peticionario. Para enfrentar la justificada crítica que se le hace aquí, la mayoría menciona en su opinión las disposiciones aludidas muy de pasada y ofrece una interpretación superficial y enrevesada de ellas. No hay un intento serio de examinar dichas disposiciones cabalmente, para ver si pueden aplicarse a este caso de modo tal que pueda evitarse la patente injusticia que representa que el peticionario continúe sometido a una obligación alimenticia que se le hace imposible pagar.

La mayoría, pues, rehusa entender que el caso de autos presenta una ocasión propicia para aplicar aquí la profunda concepción de lo que es un ordenamiento jurídico, que expresáramos en Passalacqua v. Mun. de San Juan, 116 D.P.R. 618, 632 (1985):

> "Tenemos el deber de hacer que el Derecho sirva propósitos útiles sociales, no esquemas teóricos abstractos que arrojan resultados prácticos absurdos."

Con su dictamen, la mayoría da un lamentable ejemplo de lo que tanto se ha criticado respecto al estrecho positivismo que a veces ha sido característica deplorable de la labor judicial. La mayoría se niega aquí a elevar sus miras más allá de lo pedestre; se niega a utilizar la inventiva jurídica para encontrar una solución justa a un problema de excepción. Ni siquiera explica la mayoría a qué fines o propósitos de interés público responde el duro dictamen que decreta en este caso particular. No es ésta ciertamente una ocasión en la cual el proceso judicial ha ostentado sus mejores galas.

En el caso de autos, el peticionario no buscaba evadir el pago de la pensión alimentaria que le fue impuesta en Massachusetts. Por el contrario, trataba de pagarla de conformidad con su capacidad económica actual. Era evidente la inhabilidad del alimentante de satisfacer con sus ingresos presentes la obligación alimentaria que le fue impuesta originalmente. Conforme a la interpretación propuesta del derecho aplicable, nuestros tribunales pueden considerar la moción de rebaja de pensión presentada por el peticionario. Resolver lo contrario constituye declarar el fracaso de nuestro sistema de administración de la justicia; y darle validez a la mordaz crítica de algunos de que "the Law is an

ass".[35] Como yo no comparto esa baja concepción del Derecho, disiento.

JAIME B. FUSTER BERLINGERI

JUEZ ASOCIADO

Notas al calce

1. Solicitó, además, que se localizara al patrono de Barbosa Dieppa, se presentara información sobre el salario de este último, se ordenara la retención de ingresos en el origen y se cobraran los atrasos en los pagos de la pensión alimentaria acumulados hasta el 3 de marzo de 1995.

2. Esta hija fue procreada con Sonia I. Castro.

3. La Examinadora recomendó, además, que se le concediera un término a Barbosa Dieppa para que obtuviera representación legal y presentara la moción de rebaja anunciada.

4. Esta vista se celebró el 27 de agosto de 1996.

5. Esta orden fue notificada el 23 de octubre de 1996.

6. En Tribunal de Circuito resolvió que, de acuerdo con lo dispuesto en la "Consumer Protection Act", 42 U.S.C.A. § 1673(b)(2) (Supl. 1998), la Ley Orgánica de la Administración para el Sustento de Menores, 8 L.P.R.A. § 523(6) (1996), y lo resuelto en Galarza Rivera v. Mercado Pagán, op. de 19 de diciembre de 1995, 95 J.T.S. 164, en las págs. 415-16, sólo se podía ordenar la retención en el origen del 55% del ingreso neto de Barbosa Dieppa. El tribunal de instancia había ordenado que se retuviera más del 66% del ingreso neto del recurrente.

7. Barbosa Dieppa solicitó infructuosamente en dos ocasiones la reconsideración de este dictamen.

8. La UIFSA sustituyó la Ley Uniforme de Reciprocidad para la Ejecución de Obligaciones sobre Alimentos, denominada en inglés como "Uniform Reciprocal Enforcement of Support Act" (URESA), según aprobada originalmente en 1950 y enmendada posteriormente en 1952 y 1958, y la Ley Revisada Uniforme de Reciprocidad para la Ejecución de Obligaciones sobre Alimentos de 1968, denominada en inglés como "Revised Uniform Reciprocal Enforcement of Support Act of 1968" (RURESA). Véase, Uniform Interstate Family Support Act, 9 U.L.A. nota histórica, en la pág. 272 (Supl. 1997).

9. Para 1997, la UIFSA había sido adoptada en 35 estados y el Distrito de Columbia. Véase, Uniform Interstate Family Support Act (1992), 9 U.L.A. tabla, en la pág. 316 (Supl. 1997).

10. La razón para exigir este requisito, según se expresa en el historial legislativo de la PRWORA fue el siguiente:

> Mandatory passage and use of UIFSA is a cornerstone of a major purpose of the committee proposal--improved child support enforcement in interstate cases. Without uniform laws and procedures governing child support, the success of interstate cases will continue to be severely constrained. Virtually every witness that testified on interstate enforcement before the committee recommended that UIFSA be made mandatory. H.R. No. 104-651, en la pág. 1412 (1996), reimpreso en 1996 U.S.C.C.A.N. 2183, 2471 (énfasis suplido).

11. La exposición de motivos informa, además, lo siguiente:

> En el informe al Congreso, la Comisión Interestatal de Sustento de Menores de los Estados Unidos... informó que de un treinta... a un cuarenta por ciento... de los casos de pensiones alimentarias son interestatales, con sólo un diez por ciento... de recaudaciones. Esto representa que de un veinte... a un treinta por ciento... de los menores con derecho a alimentos no los están recibiendo.
>
> En Puerto Rico el número de casos interestatales es menor, esto es, 26,000 de 198,000 casos, poco menos del trece por ciento.... Sin embargo, ello no deja de ser un número considerable y un serio problema para los menores que no reciben alimentos. Tan grave es el problema que, generalmente, el trámite de un caso interestatal típico toma entre ocho... a diez... meses, como mínimo, y muchos nunca se resuelven. Los procesos de investigación del padre ausente, la investigación de la capacidad

económica, la fijación y la ejecución de la obligación alimentaria en el área de reclamaciones de alimentos interestatales tienen particularidades y problemas que esta Ley propone resolver.

12. Esta disposición no forma parte del estatuto modelo aprobado por la Conferencia Nacional de Comisiones sobre Leyes Uniformes Estatales. Véase, Uniform Interstate Family Support Act, 9 U.L.A. § 904 (Supl. 1997). Fue añadida por la Asamblea Legislativa de Puerto Rico al adoptarlo.

13. Véase, Child Support Enforcement Division of Alaska v. Brenckle, 675 N.E.2d 390 (Mass. 1997). En este caso, la Corte Suprema del estado de Massachussetts resolvió que la UIFSA, la cual, según fue adoptada en ese estado, contenía una disposición similar a la sección 904 de la LIUAP, aplicaba retroactivamente a una orden de pensión alimentaria para un menor dictada durante la vigencia de la legislación anterior, en ese caso, la URESA. Según expresó esa corte: "UIFSA... provides the procedural framework for enforcing one State's support order in another jurisdiction. As a remedial statute, and not one affecting substantive rights, it is proper that UIFSA should be applied retroactively". Id., en la pág. 393 (escolio omitido).

14. La Ley Orgánica de la Administración para el Sustento de Menores fue enmendada recientemente, además, por la Ley Núm. 169 de 18 de diciembre de 1997.

15. Este principio deriva esencialmente de la "Parental Kidnapping Prevention Act of 1980", 28 U.S.C.A. § 1738A (1994). Véase, Uniform Family Support Act, 9 U.L.A. § 205 comentario, en la pág. 285 (Supl. 1997).

16. Según el comentario del estatuto modelo, "[t]his section is perhaps the most crucial provision in UIFSA". Uniform Interstate Familiy Support Act, 9 U.L.A. § 205 comentario, en la pág. 285 (Supl. 1997).

17. La traducción del estatuto adoptada por la Asamblea Legislativa de Puerto Rico es defectuosa en este aspecto. La versión en inglés de la parte pertinente de la sección 205 establece textualmente lo siguiente:

> (a) A tribunal of Puerto Rico issuing a support order consistent with the law of Puerto Rico has continuing, exclusive jurisdiction over a child-support order:
>
> . . . .
>
> (2) until all of the parties who are individuals have filed written consents with the tribunal of Puerto Rico for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction. (Énfasis suplido).

La traducción de esta disposición adoptada por la Asamblea Legislativa de Puerto Rico lee como sigue:

> (a) El tribunal de Puerto Rico que emita una orden de pensión alimentaria para un menor conforme dispone la ley, tiene jurisdicción continua y exclusiva sobre dicha orden:
>
> . . .
>
> (2) cuando todas las partes hayan prestado su consentimiento por escrito en el tribunal de Puerto Rico para que un tribunal de otro estado modifique la orden y asuma jurisdicción continua y exclusiva. (Énfasis suplido).

La comparación de ambos textos demuestra claramente que donde la versión castellana dice "cuando", se debe leer "hasta", conforme con la sección 905 del artículo 9 de la LIUAP, la cual establece la preeminencia de la versión inglesa en caso de discrepancia entre esta versión y la castellana. Véase, además, Cód. Civil de P.R., art. 13(a), 31 L.P.R.A. § 13(a) (1993).

18. Esta disposición fue redactada deliberadamente en voz pasiva por la Conferencia Nacional de Comisionados sobre Leyes Uniformes Estatales, para no limitar quién es la persona capacitada para enviar una orden de retención de un

estado a otro. Según se explica en el comentario del estatuto modelo: "Aun cuando el remitente será de ordinario una agencia de sustento de menores o el alimentista, el alimentante o cualquier otra persona pudiera suministrarle la orden de retención de ingresos a un patrono". Uniform Interstate Family Support Act, 9 U.L.A. § 501 comentario, en la pág. 299 (Supl. 1997) (traducción nuestra).

19. Según la sección 507 del artículo 5 de la LIUAP:

> (a) La parte que solicita el cumplimiento de una orden de pensión alimentaria o una orden de retención de ingresos, o ambas, emitida por un tribunal de otro estado, podrá enviar los documentos requeridos para el registro de la orden a la Administración para el Sustento de Menores de Puerto Rico.
>
> (b) Una vez recibidos los documentos, la agencia de sustento de menores, [sin necesidad de registrar previamente]... la orden, considerará y[,] si lo estima apropiado, utilizará cualquier procedimiento administrativo autorizado por la ley de Puerto Rico para ejecutar la orden de pensión alimentaria o la orden de retención de ingresos, o ambas. Si el alimentante no objeta la validez o la ejecución de la orden por la vía administrativa,... [la orden no tiene que ser registrada. Si el alimentante objeta la validez o la ejecución de la orden por la vía administrativa,] la agencia de sustento de menores registrará la misma según se dispone en esta ley.

Debido a que la traducción de este inciso es defectuosa, lo hemos citado haciendo las modificaciones pertinentes. Véanse, LIUAP, art. 9, § 905; Cód. Civil de P.R., art. 13(a), 31 L.P.R.A. § 13(a) (1993). El inciso (b) traducido lee textualmente como sigue:

> (b) Una vez recibidos los documentos, la agencia de sustento de menores, previo el registro de la orden, considerará y si lo estima apropiado, utilizará cualquier procedimiento administrativo autorizado por la ley de Puerto Rico para ejecutar la orden de pensión alimentaria o la orden de retención de ingresos, o ambas. Si el alimentante no objeta la validez o la ejecución de la orden por la vía administrativa, la agencia de sustento de menores registrará la misma según se dispone en esta ley. LIUAP, art. 5, § 507(b) (énfasis suplido).

Le versión inglesa de esta disposición es la siguiente:

> (b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of Puerto Rico to enforce a support order or an income-witholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity of or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Act. (Énfasis suplido).

20. En el comentario del estatuto modelo se explica lo siguiente:

> Subsection (c) mandates enforcement of the registered order. This is a sharp variation of RURESA § 40, which stated that 'the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State." This language was generally construed as converting the foreign order into an order of the registering state. Once the registering court concluded that it was enforcing its own order, the next logical step was to modify the order as the court deemed appropriate. This rationale resulted in yet another order in the multiple-order system. UIFSA mandates an end to this process, except as modification is authorized in... article [6]. Uniform Interstate Family Support Act, 9 U.L.A. § 603 comentario, en la pág. 305 (Supl. 1997) (énfasis suplido y citas omitidas).

21. Se debe señalar que, distinto de cuando se trata de una orden de pensión alimentaria para un menor, un tribunal que no sea el emisor carece de jurisdicción para modificar una orden de pensión alimentaria para un cónyuge o ex cónyuge

El tribunal que emite una orden de pensión alimentaria en beneficio de un cónyuge o ex cónyuge retiene jurisdicción continua y exclusiva sobre la orden mientras subsista la obligación de alimentar. Véanse, LIUAP, art. 2, §§ 205(f), 206 (c); Uniform Interstate Family Support Act, 9 U.L.A. § 205 comentario, en la pág. 286 (Supl. 1997). Según se explica en el comentario de la sección 206 de la UIFSA:

> Spousal support is treated differently; the issuing tribunal retains continuing, exclusive jurisdiction over an order of spousal support throughout the entire existence of the support obligation. Sections 205(f) and 206(c) state that the procedures of UIFSA are not available to a responding tribunal to modify the existing spousal support order from the issuing state.
>
> The prohibition of modification of spousal support by a nonissuing state tribunal under UIFSA is consistent with the principle that a tribunal should apply local law to such cases to insure efficient handling and to minimize choice of law problems. Avoiding conflict of law problems is almost impossible if spousal support orders are subject to modification in a second state. For example, states take widely varying views of the effect of a spousal support order of the obligee's remarriage or cohabitation. Making a distinction between spousal and child support is further justified because the standards for modification of child support and spousal support are very different. In most jurisdictions a dramatic improvement in the obligor's economic circumstances will have little or no relevance in an action seeking upward modification of spousal support, while a similar change in an obligor's situation typically is the primary basis for an increase in child support. This disparity is founded on a policy choice that post-divorce success of an obligor-parent should benefit the obligor's child but not the obligor's ex-spouse.
>
> Finally, UIFSA does not provide for shifting the continuing, exclusive jurisdiction over a spousal-support order by mutual agreement. That procedure is limited to child support under Subsection (a)(2) [of Section 205]. Note that the Act is silent rather than preclusive on the subject. If the parties wish to enter into such an agreement, it is up to the individual states to decide whether to recognize it. A waiver of continuing, exclusive jurisdiction and subsequent modification of spousal support by a tribunal of another state simply is not authorized under the auspices of UIFSA. Uniform Interstate Family Support Act, 9 U.L.A. § 205 comentario, en la pág. 286 (Supl. 1997).

22. El inciso (a) de esta sección es correlativo con el inciso (a) de la sección 205 en cuanto al principio de jurisdicción continua y exclusiva del tribunal que emite la orden. Véase, Uniform Interstate Family Support Act, 9 U.L.A. § 611 comentario, en la pág. 309 (Supl. 1997).

23. Véanse, Solicitud de certiorari presentada ante el Tribunal Supremo de Puerto Rico el 17 de abril de 1997, en la pág. 6; Solicitud de certiorari presentada ante el Tribunal de Circuito de Apelaciones el 20 de diciembre de 1996, en la pág. 8; Moción solicitando rebaja de pensión alimentaria y memorando de derecho presentada ante el tribunal de primera instancia el 8 de abril de 1996, en la pág. 3; Giro postal enviado a Luz C. Aponte el 10 de febrero de 1996; Declaración jurada de Eliseo Barbosa Dieppa suscrita el 10 de enero de 1995 ante notario.

24. Véase, e.g., Declaración jurada de Eliseo Barbosa Dieppa suscrita el 10 de enero de 1995.

25. Para una conclusión igual a la expresada, véanse los siguientes casos: Office of Child Support Enforcement v. Cook, 959 S.W.2d 763, 764-65 (Ark. App. 1998); Hinton v. Hinton, 496 S.E.2d 409, 411 (N.C. App. 1998).

26. Barbosa Dieppa nunca ha hecho alegación alguna al respecto.

27. Cabe señalar, no obstante, que el artículo 19 de la Ley Orgánica de la Administración para el Sustento de Menores, según enmendada por la sección 15 de la Ley Núm. 169 de 18 de diciembre de 1997, establece que "[l]a reducción de la pensión alimentaria será efectiva desde la fecha en que el Tribunal o el Administrador decida sobre la petición de reducción o el Administrador modifique la pensión establecida conforme al reglamento de revisión periódica que se adopte". (Énfasis suplido) La norma establecida en Valencia, Ex parte, supra, en la pág. 916, y reiterada posteriormente en López v. Rodríguez, supra, en las págs. 35-36 y en Rivera Maldonado v. Cabrera Olivera, op. de 2 de

marzo de 1992, 92 J.T.S. 29, en las págs. 9321-22, se debe entender modificada a tono con el artículo 19 de la Ley Orgánica de la Administración para el Sustento de Menores, según enmendada.

28. Por otro lado, la sección 306 del artículo 3 de la LIUAP establece que "[s]i una petición o reclamación comparable es recibida por un tribunal sin competencia en Puerto Rico, éste remitirá la petición y los documentos que la acompañan al tribunal apropiado en Puerto Rico o en otro estado y notificará al peticionario el lugar y la fecha en que remitieron los documentos".

No obstante, independientemente de cuál sea el significado preciso de la palabra "competencia" en este contexto - nótese que la versión inglesa de la LIUAP, la cual, según consignamos anteriormente, predomina sobre la castellana, no habla de "venue", sino de "an inappropriate tribunal", véase, Uniform Interstate Family Support Act, 9 U.L.A. § 306 (Supl. 1997) -, el comentario que acompaña la sección 306 de la UIFSA sugiere que el propósito de esta disposición es limitado y específico. El comentario oficial indica lo siguiente:

> This section directs a tribunal receiving UIFSA documents in error to forward the original documents to their proper destination without undue delay, whether the appropriate tribunal is located in the same state or elsewhere. This section is intended to apply both to initiating and responding tribunals receiving such documents. For example, if a tribunal is inappropriately designated as the responding tribunal, it shall forward the petition to the appropriate responding tribunal wherever located, if known, and notify the initiating tribunal of its action. Such a procedure is much to be preferred to returning the documents to the initiating tribunal to begin the process anew.

Uniform Interstate Family Support Act, 9 U.L.A. § 306 comentario (Supl. 1997).

29. Esta ley fue aprobada el 20 de octubre de 1994.

30. Algunos de los propósitos que inspiraron la aprobación de la FFCCSOA fueron facilitar la ejecución de las órdenes de pensión alimentaria para menores entre los estados y evitar la competencia jurisdiccional y el conflicto entre las cortes estatales al momento de dictar órdenes de pensión alimentaria para menores. Véase, S. Rep. No. 103-361, en la pág. 4 (1994), reimpreso en 1994 U.S.C.C.A.N. 3259, 3260. Entre las determinaciones que propiciaron la aprobación del estatuto, el Congreso consignó que la falta de uniformidad en la legislación estatal sobre pensiones alimentarias para menores fomentaba que se hiciera caso omiso de las órdenes de pensión alimentaria, ocasionando un cúmulo masivo, a nivel nacional, de atrasos en los pagos, y generaba la excesiva relitigación de los casos y la emisión de órdenes de pensión alimentaria conflictivas por cortes de diversas jurisdicciones, lo cual resultaba en confusión, despilfarro de recursos judiciales, falta de respecto hacia las cortes, y la disminución de la confianza pública en la ley. Véase, FFCCSOA, § 2(a)(C)(E), 108 Stat. 4063-64 (1994).

31. Esta disposición establece: "A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order". 28 U.S.C.A. § 1738B(d) (Supl. 1998).

32. Para una discusión de una situación similar bajo la UIFSA y la FFCCSOA, véase, Patricia Wick Hatamyar, Critical Applications and Proposals for Improvement of the Uniform Interstate Family Support Act and the Full Faith and Credit for Child Support Orders Act, 71 St. John's L. Rev. 1, 37-38 (1997).

33. Bajo su propio ordenamiento jurídico, Massachusetts reconoce la doctrina de cambios materiales en las circunstancias para justificar una modificación y atenuar el cumplimiento de las obligaciones alimentarias. Véanse, Hamilton v. Pappallardo, 677 N.E. 2d 1176, 677 N.E. 2d 1176 (1997); Buckley v. Buckley, 679 N.E. 2d. 596, 42 Mass. App. Ct. 716 (1997); Keller v. O'Brien, 683 N.E. 2d 1026, 425 Mass. 774 (1997); Cournoyer v. Cournoyer, 663 N.E. 2d 863 (Mass. App. Ct. 1996); Heins v. Ledis, 664 N.E. 2d 10 (Mass. 1996), Buchanan v. Buchanan, 231 N.E. 2d 570, 353 Mass. 351 (1967).

34. Véase, Puig Brutau, Fundamentos de Derecho Civil, Tomo I, Vol. II, págs. 364-365 (1985); Rivera v. Caribbean Home Const. Corp., 100 D.P.R. 106 (1971).

35. "If the Law supposes that, said Mr. Bumble... the Law is an ass- a idiot." Dickens, Oliver Twist.

Presione Aquí para regresar al Menú Anterior y seleccionar otro caso.

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*455 U.S. 691, *; 102 S. Ct. 1357, **;*
*71 L. Ed. 2d 558, ***; 1982 U.S. LEXIS 88*

UNDERWRITERS NATIONAL ASSURANCE CO. v. NORTH CAROLINA LIFE & ACCIDENT & HEALTH INSURANCE GUARANTY ASSN. ET AL.

No. 80-1496

SUPREME COURT OF THE UNITED STATES

455 U.S. 691; 102 S. Ct. 1357; 71 L. Ed. 2d 558; 1982 U.S. LEXIS 88; 50 U.S.L.W. 4319

November 9, 1981, Argued
March 24, 1982, Decided

PRIOR HISTORY:

CERTIORARI TO THE COURT OF APPEALS OF NORTH CAROLINA.

DISPOSITION: 48 N. C. App. 508, 269 S. E. 2d 688, reversed and remanded.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner insurance corporation sought review of a judgment of the North Carolina Court of Appeals, which held that an Indiana court was without jurisdiction to adjudicate the rights of petitioner and respondent insurance association regarding a deposit held in trust by North Carolina officials.

OVERVIEW: The North Carolina court refused to recognize the Indiana court's prior ruling that all claims to the deposit were compromised, settled, and dismissed by the final order entered by that court during a rehabilitation proceeding. The North Carolina courts held that the Guaranty Act and the Deposit Act deprived the rehabilitation court of the subject matter jurisdiction to determine rights in the deposit. On appeal, the court held that regardless of the validity of this holding as a matter of North Carolina law, it was an inappropriate ground for refusing to accord the Indiana judgments full faith and credit. The North Carolina courts, therefore, should have determined whether the rehabilitation court fully and fairly considered the question of subject matter jurisdiction over the North Carolina deposit. If the matter was fully considered and finally determined in the rehabilitation proceedings, the judgment was entitled to full faith and credit in the North Carolina courts. The Court concluded that the rehabilitation court fully and fairly considered whether it had subject matter jurisdiction to settle the pre-rehabilitation claims of the parties to the North Carolina deposit.

OUTCOME: The Court reversed the decision of the appellate court and remanded for further proceedings.

CORE TERMS: rehabilitation, deposit, policyowner, guaranty, pre-rehabilitation, policyholder, rehabilitation plan, general asset, notice, compromised, subject matter jurisdiction, personal jurisdiction, settle, subject matter, exclusive jurisdiction, direct review, service contract, exercise jurisdiction, intervened, questions of jurisdiction, litigated, personam jurisdiction, interested parties, res judicata, adjudicate, judicata, assertion of jurisdiction, retained jurisdiction, financial condition, sole benefit

LexisNexis(R) Headnotes + Hide Headnotes

Civil Procedure > [illegible] > [illegible] > [illegible] > [illegible]

[illegible] > [illegible] > [illegible]

HN1 See U.S. Const. art. IV, § 1. *Shepardize:* Restrict By Headnote

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Full Faith & Credit > General Overview

HN2 In order to fulfill the constitutional mandate under U.S. Const. art. IV, § 1, the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Full Faith & Credit > Full Faith & Credit Statute

Constitutional Law > Relations Among Governments > Full Faith & Credit

HN3 See 28 U.S.C.S. § 1738. *Shepardize:* Restrict By Headnote

Civil Procedure > Jurisdiction > Jurisdictional Sources > General Overview

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Full Faith & Credit > General Overview

HN4 A judgment of a court in one state is conclusive upon the merits in a court in another state only if the court in the first state had power to pass on the merits -- had jurisdiction, that is, to render the judgment. Consequently, before a court is bound by the judgment rendered in another state, it may inquire into the jurisdictional basis of the foreign court's decree. If that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Res Judicata

HN5 The principles of res judicata apply to questions of jurisdiction as well as to other issues. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Jurisdiction > General Overview

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Full Faith & Credit > General Overview

HN6 A judgment is entitled to full faith and credit, even as to questions of jurisdiction, when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Full Faith & Credit > General Overview

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Res Judicata

HN7 A party cannot escape the requirements of full faith and credit and res judicata by asserting its own failure to raise matters clearly within the scope of a prior proceeding. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Full Faith & Credit > General Overview

HN8 The fact that the rendering court may have made an error of law with respect to a particular question does not deprive its decision of the right to full faith and credit, so long as that court fully and fairly considered its jurisdiction to adjudicate the issue. More Like This Headnote | *Shepardize:* Restrict By Headnote

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DECISION: North Carolina courts' refusal to treat as res judicata Indiana rehabilitation court's adjudication of rights to insurance company's deposit posted in North Carolina, held violative of full faith and credit clause (Art IV, 1).

SUMMARY: An Indiana stock insurance corporation, as required by North Carolina law to do business in the state, joined the North Carolina Life and Accident and Health Insurance Guaranty Association, a state-created association of all foreign and domestic insurance companies operating in North Carolina which was ultimately responsible for fulfilling the policy obligations of any member that becomes insolvent or otherwise fails to honor its obligation to North Carolina policyholders. After determining that the insurance company's financial condition was questionable, the North Carolina Commissioner of Insurance required it to post a $ 100,000 deposit for the sole benefit of North Carolina policyholders, and the company did so soon thereafter. Subsequently, the Indiana Department of Insurance commenced rehabilitation proceedings against the insurance company in the Superior Court for Marion County, on the ground that its reserves were inadequate to meet its future policy obligations. The rehabilitation court appointed the Indiana Commissioner of Insurance as rehabilitator and directed him to take possession of the business and assets of the insurance company, and notice of this action was sent to all state insurance commissioners. The North Carolina Commissioner informed the Association that the company was undergoing rehabilitation in Indiana, and that title to all assets of the company had been transferred, and the Association later intervened in the rehabilitation proceedings. After extensive proceedings, the rehabilitation court ordered the adoption of a rehabilitation plan, the court stating that it had jurisdiction over the subject matter and over the parties, including all policyowners and state insurance guaranty associations, and no appeal was taken from this order. Afterwards, the insurance company and the the Association disagreed as to the effect of the plan on the deposit previously made in North Carolina, and the Association filed suit against the insurance company, and various North Carolina officials, in the Superior Court of Wake County, North Carolina, seeking a declaratory judgment that the Association was entitled to use the deposit to fulfill the pre-rehabilitation contractual obligations to North Carolina policyowners that had been compromised in the rehabilitation proceeding. The insurance company answered, asserting that the Indiana judgment was res judicata as to any pre-rehabilitation claims against the deposit, and therefore was entitled to full faith and credit in the North Carolina courts. In addition, the insurance company invoked the rehabilitation court's continuing jurisdiction to resolve all the questions involving the interpretation of the plan, and after a hearing at which the company and the Association appeared and presented their respective full-faith-and-credit claims, the rehabilitation court held that the plan fully adjudicated and determined that the North Carolina deposit was an asset of the insurance company, and any claim existing as of the date of the adoption of the plan was compromised, settled, and dismissed by its final order and the plan. However, on motions for summary judgment filed by both parties, the North Carolina trial court ruled in favor of the Association, reasoning that it was the only court with a requisite subject matter jurisdiction to determine the rights of North Carolina policyholders in the deposit, and noting that the Indiana courts did not have in personam jurisdiction over North Carolina officials or over the North Carolina policyholders, and the court ordered the liquidation of the deposit to reimburse the Association for satisfying the pre-rehabilitation claims of North Carolina policyholders. On appeal, the Court of Appeals of North Carolina affirmed, concluding that the deposit could never be an asset of the insurance company, and that the rehabilitation court's decision to the contrary was not entitled to full faith and credit (48 NC App 508, 269 SE2d 688), and the Supreme Court of North Carolina declined to grant discretionary review (301 NC 527, 273 SE2d 453).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by Marshall, J., joined by Burger, Ch. J., and Brennan, Blackmun, Rehnquist, and O'Connor, JJ., it was held that the North Carolina courts violated the full faith and credit clause of the United States Constitution (Art IV 1) and its implementing statute (28 USCS 1738) by refusing to treat the rehabilitation court's judgment adjudicating the rights of the various parties in the $ 100,000 deposit as res judicata in the subsequent proceedings brought by the Association, since the rehabilitation court fully and fairly considered whether it had subject-matter jurisdiction to settle the pre-rehabilitation claims of the parties before it to the deposit, the rehabilitation court had personal jurisdiction over all parties necessary to the determination that the Association could not satisfy pre-rehabilitation claims out of the deposit, and any argument that honoring the rehabilitation court's determination that the deposit was an asset of the insurance company would negate North Carolina's comprehensive statutory scheme to insure the protection of North Carolina policyowners had to be made in Indiana, not in North Carolina.

White, J., joined by Powell and Stevens, JJ., concurred in the judgment, expressing the view that

jurisdiction over the deposit was not relevant to the question of the res judicata effect of the rehabilitation court's judgment as to the Association, that the rehabilitation plan fully determined the nature of the claim that the Association would have against the insurance company and established the manner in which it could collect on those claims, and that, since the rehabilitation court did not fail to follow the procedural requirements of the due process clause, its decision had to be given res judicata effect by the North Carolina courts with regard to the Association.

LAWYERS' EDITION HEADNOTES:

[*LEdHN1]**
JUDGMENT §369
full faith and credit -- insurance rehabilitation proceedings -- adjudicating rights to deposit --
Headnote: LEdHN(1A) [1A] LEdHN(1B) [1B] LEdHN(1C) [1C] LEdHN(1D) [1D]

A state court violates the full faith and credit clause of the United States Constitution (Art IV, 1) and its implementing statute (28 USCS 1738) by refusing to treat the prior judgment of another state's insurance rehabilitation court--adjudicating the rights of various parties in a $ 100,000 deposit held in trust by the forum state's insurance guaranty association--as res judicata in a proceeding brought by the association seeking a declaratory judgment that it was entitled to use the deposit to fulfill the pre-rehabilitation contractual obligations to its state's policyholders that had been compromised in the rehabilitation proceedings, where the rehabilitation court fully and fairly considered whether it had subject-matter jurisdiction to settle the pre-rehabilitation claims of the parties before it to the deposit, the rehabilitation court had personal jurisdiction over all parties necessary to its determination that the association could not satisfy pre-rehabilitation claims out of the deposit, and any argument that honoring the rehabilitation court's determination that the deposit was an asset of the insurance company would negate the forum state's comprehensive statutory scheme to ensure the protection of the state's policy owners had to be made in the state of the rehabilitation court.

[*LEdHN2]**
JUDGMENT §357
full faith and credit -- conclusiveness of foreign judgment -- necessity to have jurisdiction --
Headnote: LEdHN(2) [2]

Under full faith and credit principles, a judgment of a court in one state is conclusive upon the merits in a court in another state only if the court in the first state had power to pass on the merits, that is that it had jurisdiction to render the judgment; thus, before a court is bound by the judgment rendered in another state, it may inquire into the jurisdictional basis of the foreign court's decree, and if that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given.

[*LEdHN3]**
ERROR §1334
JUDGMENT §357
determination of jurisdiction -- scope of review -- direct or collateral review --
Headnote: LEdHN(3A) [3A] LEdHN(3B) [3B]

The limited scope of review one court may conduct to determine whether a foreign court had jurisdiction to render a challenged judgment and thus was entitled to full faith and credit does not apply where a party seeks direct review of a court's judgment; therefore, a state court's determination of its own jurisdiction, as well as its determination that an insurance rehabilitation court in another state was without jurisdiction, is not entitled to this limited scope of review, and the insurance company appealing the court's determination need only argue that the court erred in concluding that the rehabilitation court did not fully and fairly determine that it had jurisdiction to adjudicate rights in a deposit which was the subject of proceedings in both states.

[*LEdHN4]**
JUDGMENT §1215
res judicata -- jurisdiction --
Headnote: LEdHN(4) [4]

The principle of res judicata apply to questions of jurisdiction as well as to other issues.

[*LEdHN5]**
JUDGMENT §319
insurance rehabilitation proceedings -- inappropriateness of collateral attack --
Headnote:LEdHN(5A)[5A]LEdHN(5B)[5B]

Whether or not the ruling of an out-of-state insurance rehabilitation court that the claims asserted by a state insurance guaranty association in litigation in its state courts would violate the rehabilitation plan proposed by the rehabilitation court is a matter to be decided by courts in the state of the rehabilitation court on direct review, not in the association's state's courts or in the United States Supreme Court on collateral attack.

[*LEdHN6]**
JUDGMENT §374.5
full faith and credit -- error of law by rendering court --
Headnote:LEdHN(6A)[6A]LEdHN(6B)[6B]

The fact that the rendering court may have made an error of law with respect to a particular question does not deprive its decision of the right to full faith and credit, so long as that court fully and fairly considered its jurisdiction to adjudicate the issue.

[*LEdHN7]**
JUDGMENT §83
res judicata -- full faith and credit -- failure to raise matters within scope of proceeding --
Headnote:LEdHN(7)[7]

A party cannot escape the requirement of full faith and credit and res judicata by asserting its own failure to raise matters clearly within the scope of a prior proceeding.

[*LEdHN8]**
JUDGMENT §80
conclusiveness -- settling claims of two parties -- effect of third party --
Headnote:LEdHN(8)[8]

A court of competent jurisdiction can settle the claims of two competing parties to specific property even though a third party may claim an interest in the same res.

SYLLABUS: Petitioner, an Indiana stock insurance corporation, as required by law to do business in North Carolina, was a member of respondent North Carolina Life and Accident and Health Insurance Guaranty Association (North Carolina Association), which, under a North Carolina statute, is ultimately responsible for fulfilling the policy obligations of members that become insolvent or otherwise fail to meet their policy obligations. Because of its questionable financial condition, petitioner was required by respondent North Carolina Commissioner of Insurance to post a $ 100,000 deposit for the benefit of its North Carolina policyholders. Subsequently, rehabilitation proceedings were brought against petitioner in an Indiana state court (Rehabilitation Court), in which the North Carolina Association intervened and in which the court certified a class consisting of all past and present policyholders. The Rehabilitation Court ultimately ruled in 1978 that all pre-rehabilitation claims to the deposit were compromised, settled, and dismissed by the court's 1976 order which adopted a rehabilitation plan and which ruled that the court had jurisdiction over the subject matter and over the parties. In the meantime, when a dispute arose between petitioner and the North Carolina Association as to the rehabilitation plan's effect on use of the North Carolina deposit, the North Carolina Association filed suit in a North Carolina state court, seeking a declaratory judgment that it was entitled to use the deposit to fulfill the pre-rehabilitation contractual obligations to North Carolina policyowners that had been compromised in the rehabilitation proceeding. Holding that the North Carolina statutes governing the North Carolina Association and the $ 100,000 deposit deprived the Rehabilitation Court of subject-matter jurisdiction to determine rights in the deposit, the North Carolina court refused to honor the Rehabilitation Court's prior ruling as to claims to the deposit. The North Carolina Court of Appeals affirmed.

Held: Under the Full Faith and Credit Clause, a judgment of a court in one State is conclusive upon the merits in another State only if the court in the first State had power to pass on the merits -- that is, had

jurisdiction over the subject matter and the relevant parties. Cf. Durfee v. Duke, 375 U.S. 106. In this case, the North Carolina courts violated the Full Faith and Credit Clause by refusing to treat the Rehabilitation Court's prior judgments as res judicata. Pp. 703-716.

(a) Regardless of the validity, under North Carolina law, of the North Carolina courts' holding that the Rehabilitation Court did not have subject-matter jurisdiction to determine the rights in the deposit, it is not an appropriate ground for refusing to accord the Indiana judgments full faith and credit. The principles of res judicata apply to questions of jurisdiction, and "a judgment is entitled to full faith and credit -- even as to questions of jurisdiction -- when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment." Durfee v. Duke, supra, at 111. The record here establishes that the Rehabilitation Court fully and fairly considered whether it had subject-matter jurisdiction to settle the pre-rehabilitation claims of the parties before it to the North Carolina deposit. As an intervening party, the North Carolina Association was obliged to advance its argument that the court did not have authority to settle pre-rehabilitation claims to the deposit when it was given the opportunity to do so. Pp. 705-710.

(b) The North Carolina courts' refusal to give the Indiana judgments full faith and credit cannot be supported on the asserted ground that the Rehabilitation Court lacked *in personam* jurisdiction over North Carolina policyowners because no policyowner actually appeared in the rehabilitation proceedings and because the class representatives could not adequately represent the policyowners in both deposit and nondeposit States. Respondents have not identified any current interest in the North Carolina deposit that a policyowner might have, independent of the interests asserted by the North Carolina Association. North Carolina law requires the Association to provide North Carolina policyowners with pre-rehabilitation coverage even if it cannot use the deposit to finance this obligation. Therefore, these policyowners have no current interest in whether the Association is allowed to liquidate the deposit. Pp. 711-713.

(c) Nor can refusal to give full faith and credit to the Rehabilitation Court's judgments be supported on the asserted ground that the court lacked *in personam* jurisdiction over North Carolina officials. Although the Rehabilitation Court did not attempt to exercise jurisdiction over the North Carolina trustees of the deposit, it did purport to exercise jurisdiction over the trust corpus; its 1978 order specified that the 1976 rehabilitation plan determined that the deposit was an asset of petitioner, subject to the court's jurisdiction. Regardless of whether this conclusion might have been erroneous as a matter of North Carolina law, the jurisdictional issue was fully and fairly litigated and finally determined by the Rehabilitation Court, and the North Carolina courts were required to honor the Rehabilitation Court's determination. A court of competent jurisdiction can settle the claims of two competing parties to specific property even though a third party may claim an interest in the same res. Pp. 713-715.

(d) There may be merit, as a matter of insurance law, in respondent's arguments that honoring the Rehabilitation Court's determination that the deposit was an asset of petitioner would negate North Carolina's comprehensive statutory scheme to ensure protection of North Carolina policyowners and that a State has a right to segregate assets of a foreign insurance company to be used for the sole benefit of that State's policyowners. However, the only forums in which respondents may challenge the Rehabilitation Court's assertion of jurisdiction on such grounds are in Indiana, not North Carolina. Pp. 715-716.

COUNSEL: Theodore R. Boehm argued the cause for petitioner. With him on the briefs was Charles T. Richardson.

William S. Patterson argued the cause for respondents. With him on the brief were Rufus L. Edmisten, Attorney General of North Carolina, Richard L. Griffin, Assistant Attorney General, Charles D. Case, and Eugene Gressman.

JUDGES: MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, BLACKMUN, REHNQUIST, and O'CONNOR, JJ., joined. WHITE, J., filed an opinion concurring in the judgment, in which POWELL and STEVENS, JJ., joined, post, p. 716.

OPINION BY: MARSHALL

OPINION: [*693] [***563] [**1360] JUSTICE MARSHALL delivered the opinion of the Court.

[***LEdHR1A] [1A] In this case, the North Carolina Court of Appeals held that an Indiana

court was without jurisdiction to adjudicate the rights of various parties in a $ 100,000 deposit held in trust by certain North Carolina officials. Because it found that the Indiana court did not have jurisdiction, the North Carolina court refused to recognize the Indiana [***564] court's prior ruling that all claims to the deposit were compromised, settled, and dismissed by the final order entered by that court during a [*694] rehabilitation proceeding. We granted certiorari to decide whether, by refusing to treat the prior Indiana court judgment as res judicata, the North Carolina court has violated the Full Faith and Credit Clause of the Constitution and its implementing federal statute. 451 U.S. 982 (1981). For the reasons stated below, we reverse the decision of the North Carolina Court of Appeals.

I

Petitioner Underwriters National Assurance Co. (Underwriters) is an Indiana stock insurance corporation specializing in life and disability insurance for certain high-income professional groups. In 1973 Underwriters was licensed to do business in 45 States, including North Carolina, and was administering over 50,000 policies. To qualify to do business in North Carolina, Underwriters was required to join respondent North Carolina Life and Accident and Health Insurance Guaranty Association (North Carolina Association), a state-created association of all foreign and domestic insurance companies operating in North Carolina. See Life and Accident and Health Insurance Guaranty Association Act, N. C. Gen. Stat. § 58-155.65 *et seq.* (1975) (Guaranty Act). Under the terms of the Guaranty Act, the North Carolina Association is ultimately responsible for fulfilling [**1361] the policy obligations of any member that becomes insolvent or otherwise fails to honor its obligations to North Carolina policyholders. N. C. Gen. Stat. § 58-155.72(4) (Supp. 1981).

In June 1973, after determining that Underwriters' financial condition was questionable, the North Carolina Commissioner of Insurance informed Underwriters that it must post a $ 100,000 deposit "for the sole benefit of North Carolina policyholders," to continue to do business in that State. Shortly thereafter, Underwriters deposited with the State a $ 100,000 bond registered to the "Treasurer of the State of North Carolina in trust for the Underwriters National Assurance [*695] Company and the State of North Carolina as their respective interests may appear under Article 20, Chapter 58-188.5 of the North Carolina General Statutes." See N. C. Gen. Stat. § 58-182 *et seq.* (1975) (Deposit Act).

The North Carolina Commissioner's fears about Underwriters' financial condition proved to be well founded. Approximately one year after Underwriters posted this bond, the Indiana Department of Insurance commenced rehabilitation proceedings against petitioner on the ground that its reserves were inadequate to meet its future policy obligations. By order dated August 5, 1974, the Superior Court for Marion County (Rehabilitation Court) n1 appointed the Indiana Commissioner of Insurance as Rehabilitator and directed him to "take possession of the business and assets of Underwriters . . . [***565] and conduct the business thereof and appoint such personnel as may be necessary to rehabilitate Underwriters." Notice of this action was sent to all state insurance commissioners, including respondent North Carolina Commissioner. The North Carolina Commissioner immediately informed the North Carolina Association that Underwriters was undergoing rehabilitation in Indiana, and that title to all assets of Underwriters had been transferred to the Indiana Rehabilitator.

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n1 The Indiana Rehabilitation Court is a court of general jurisdiction. In addition, the Rehabilitation Court is authorized by statute to oversee the actions of the Rehabilitator in formulating a plan of rehabilitation, to enter injunctions to prevent interference with either the Rehabilitator or the rehabilitation proceeding, and to enter the final order of rehabilitation. See Ind. Code § 27-1-4-1 *et seq.* (1976).

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Shortly after entering the order of rehabilitation, the Rehabilitation Court enjoined the commencement or prosecution of any suit against Underwriters or the Rehabilitator. This injunction stayed several policyholder actions that had been filed against Underwriters, and required that any person who desired to institute or to prosecute any such action [*696] join the Indiana rehabilitation proceeding. n2 The plaintiffs in the stayed actions were subsequently given permission to intervene in the rehabilitation proceeding. In October 1975, the Rehabilitation Court certified a class consisting of all past and present policyholders, and

appointed intervening plaintiffs from the stayed actions as class representatives. n3

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n2 Three class actions and one individual lawsuit were stayed as a result of the Rehabilitation Court's order. *Schultz* v. *Underwriters National Assurance Co.*, Civ. Action No. 74 C 2550 (ND Ill.) (class action on behalf of all Illinois policyowners); *Honeycutt* v. *Underwriters National Assurance Co.*, Civ. Action No. 482-74-A (ED Va.) (class action on behalf of all Virginia policyowners); *Hall* v. *Underwriters National Assurance Co.*, Civ. Action No. 75-L-1589-NE (ND Ala.) (class action on behalf of all policyowners in Madison County, Ala.); *Meyer* v. *Guarantee Reserve Life Ins. Co.*, Cause No. 786-532 (Super. Ct. of King County, Wash.). These lawsuits alleged, *inter alia*, that Underwriters had fraudulently misled policyowners as to the financial condition of the company.

n3 The court certified the class under Indiana Trial Rule 23(B)(3). Indiana Trial Rules are identical to the Federal Rules of Civil Procedure with respect to class actions.

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The Rehabilitation Court sent notice of the rehabilitation proceeding to all policyholders, informing them that the class had been certified, and that all members not requesting exclusion would be bound by **[**1362]** the judgment of the Rehabilitation Court. The notice concluded by stating that "[the] entire court file" was available to any class member. n4

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n4 The court file included a document listing Underwriters' assets. The North Carolina Association concedes that this document included the $ 100,000 deposit as a general asset of Underwriters. Brief for Respondents 11-12.

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Over the next two and one-half years, the Rehabilitation Court supervised the efforts of the Rehabilitator and other interested parties to return Underwriters to a sound financial footing. After extensive negotiations between Underwriters, the class representatives, and other interested parties, the Rehabilitator submitted a Proposed Plan to the Rehabilitation Court in April 1976. In order to preserve the financial **[*697]** health of the company and to provide continuing coverage for policyholders, the Rehabilitator proposed that the Rehabilitation Court reform the policies to require increased premiums and reduced benefits. n5 Of particular **[***566]** interest to this litigation, the Proposed Plan stated that Underwriters "[will have] no liability to any guaranty association which itself has obligations to [Underwriters'] policyowners." Proposed Rehabilitation Plan, I(J), Exhibit Binder 79 (E. B.). Part X(C) of the Proposed Plan further provided:

"The guaranty associations in some states *may have obligations to [Underwriters'] policyowners as a result of the [Underwriters] rehabilitation proceeding*. Moreover, to the extent such guaranty associations do have obligations, there is a possibility that those guaranty associations may seek to recover from [Underwriters] sums paid to [Underwriters'] policyowners. *The Rehabilitation Plan should resolve [Underwriters'] contingent liability to any guaranty association* by determining that [Underwriters] has no further obligation or liability to any guaranty association." *Id.*, at 89 (emphasis added).

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n5 Underwriters had underwritten a large block of "noncancelable" disability insurance policies. These policies not only were guaranteed to be renewable at the same premium regardless of experience, but also

entitled the policyowner to a refund of 80% of the premiums paid if no disability claims were asserted in a 10-year period. The Proposed Plan eliminated the 80% refund, and converted the policies from "noncancelable" to "guartneed renewable," meaning that the policy was renewable at the policyowner's option, but the company could increase the preimium.

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By direction of the Rehabilitation Court, the Rehabilitator mailed a copy of this Proposed Plan to all interested parties, including all state guaranty associations and insurance commissioners. The Rehabilitator subsequently sent to the guaranty associations notice of a hearing to consider various rehabilitation plans, including that of the Rehabilitator. **[*698]** This notice explicitly informed the guaranty associations that although eight associations, including the North Carolina Association, "may have obligations to . . . policyowners as a result of the [Underwriters] rehabilitation proceeding," no association had either intervened in the proceeding, or made suggestions for changes in the Plan. The notice directed that if a guaranty association desired to present any information or contentions relevant to the rehabilitation of Underwriters, it must intervene in the proceeding and present its arguments at the June 9, 1976, hearing. Unless the associations either intervened, or stated in writing that they had no obligations to policyowners and that they waived all claims against Underwriters and the Rehabilitator, a summons would issue to bring the associations before the Rehabilitation Court. *Id.*, at 59-61.

On June 8, 1976, these eight guaranty associations, including the North Carolina Association, intervened in the Indiana rehabilitation proceeding. In their motion to intervene, the guaranty associations stated that Part X(C) of the Proposed Plan was "unacceptable," and that through negotiations, the associations and the Rehabilitator had agreed on a modification that would "protect the rights of the Guaranty Associations." **[**1363]** In relevant part, n6 the guaranty associations proposed that Part X(C) be changed to read as follows:

"[Underwriters shall have] no further obligation or liability to any guaranty association other than the obligation to recognize as valid the assignment of the policyowner's rights to the guaranty association and to treat the guaranty association as it would have **[***567]** treated the policyowner; *provided, however,* if any guaranty association makes any payment to or on behalf of any policyowner which is not fully reimbursed pursuant to the foregoing **[*699]** provisions, *that association shall receive from [Underwriters] each year until fully reimbursed a portion of [Underwriters'] statutory net gain from operations* after dividends to policyowners, federal income taxes and the payments to be made under Part XI equal to the annual premium in force for basic coverage in the state of that association on August 5, 1974, divided by the total annual premiums in force for basic coverage of [Underwriters] on August 5, 1974." *Id.*, at 105 (emphasis added).

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n6 The guaranty associations also requested that the court modify the plan in ways not relevant to the instant proceeding.

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After a full hearing in which the North Carolina Association participated, the Rehabilitation Court tentatively approved the Proposed Plan, including the above modification. The court directed the Rehabilitator to send notice to all interested persons that on October 14, 1976, a final hearing would be held on the Plan and the settlement of all claims against Underwriters. The notice sent by the Rehabilitator to Underwriters, the North Carolina Commissioner of Insurance, and all other interested parties specified that "[the] Proposed Rehabilitation Plan provides in part XIII that upon [its] final approval . . . , all claims against [Underwriters] by policyowners or others are compromised and dismissed." At the request of the eight guaranty associations, the Rehabilitation Court subsequently approved a special mailing to policyholders in their respective States explaining that the guaranty associations were statutorily obligated under certain circumstances to continue to provide the benefits compromised by the Indiana court under the

Rehabilitation Plan.

In November 1976, after holding final hearings in which the North Carolina Association participated, the Rehabilitation Court approved a Plan of Rehabilitation, which was, with respect to issues relevant here, identical to the Proposed Plan. In its order adopting this Plan, the Rehabilitation Court stated that it had "jurisdiction over the subject matter and over the parties, including . . . all [Underwriters] **[*700]** policyowners [and] state insurance guaranty associations." App. 38. Further, the court specified that "[to] the extent that any claim, objection or proposal which was or *could have been* presented in this rehabilitation proceeding is inconsistent with the Plan, that claim, objection or proposal is overruled and relief to that extent denied." *Id.*, at 40 (emphasis added). The court went on to state that "[this] Order is final as to all matters occurring prior to the date of this Order." Finally, the Rehabilitation Court retained jurisdiction "to resolve all questions as to interpretation . . . of the Plan," and "to modify . . . the Plan in any respect in the light of future developments." *Id.*, at 42. Notice of the court's order adopting the final plan was sent to all interested parties, including all policyowners, state insurance commissioners, and the eight guaranty associations. No appeal was taken from this order, and Underwriters was released from rehabilitation in February 1977.

On June 8, 1977, Underwriters and the eight guaranty associations, including the North Carolina Association, **[***568]** invoked the Rehabilitation Court's continuing jurisdiction to request that it approve a "Service Contract," under which Underwriters would continue to service policyowners residing **[**1364]** in these States at pre-rehabilitation levels in return for a fee paid by the associations. The Rehabilitation Court approved the proposed contract and directed that Underwriters and the associations execute this agreement "in substantially the form" presented to the court. n7 Pursuant to this order, Underwriters and seven of the guaranty associations executed the Service Contract without incident. Before the North Carolina Association executed its Service Contract, however, it made an addition to the document previously presented to the court. Specifically referring to Underwriters' $ 100,000 **[*701]** deposit in North Carolina for the first time since it had intervened in the rehabilitation proceeding 16 months before, the North Carolina Association added the following paragraph to the Service Contract approved by the court:

"It is expressly agreed, however, that the Guaranty Association and Underwriters explicitly reserve all their rights and remedies in connection with any deposits made by Underwriters with the Commissioner of Insurance of North Carolina, including deposits understood to total One Hundred Thousand Dollars ($ 100,000.00), which rights and remedies are governed by North Carolina law." E. B. 34.

Underwriters signed the revised agreement, but it made clear in a cover letter accompanying the signed agreement its understanding that the above paragraph was intended only to preserve any *future* rights that the North Carolina Association may have in the $ 100,000 deposit. Any other interpretation of this paragraph, the letter concluded, would be unacceptable because the "Plan of Rehabilitation had the effect of shutting off rights that North Carolina citizens and/or the Guaranty Association might otherwise have had to the deposits" prior to rehabilitation. *Id.*, at 35.

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n7 At the joint request of Underwriters and the associations, the Rehabilitation Court had approved the concept of a service contract prior to the adoption of the final Plan of Rehabilitation. Brief for Petitioner 11.

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The North Carolina Association responded to this letter by filing suit against Underwriters, the North Carolina Commissioner of Insurance, and the State Treasurer, in the Superior Court of Wake County, N. C. The complaint prayed for a declaratory judgment that the North Carolina Association was entitled to use the $ 100,000 deposit to fulfill the pre-rehabilitation contractual obligations to North Carolina policyowners that had been compromised in the rehabilitation proceeding. The North Carolina Commissioner and Treasurer filed a cross-claim against Underwriters, also requesting that the deposit be liquidated for the benefit of the North Carolina Association and North Carolina policyholders. Underwriters answered, asserting that the Indiana judgment **[*702]** was res judicata as to any pre-rehabilitation claims against the deposit, and therefore was entitled to full faith and credit in the North Carolina courts.

Invoking the Rehabilitation Court's continuing jurisdiction to resolve [***569] all questions involving the interpretation of the Plan, Underwriters filed a petition for instructions in July 1978. The Rehabilitation Court granted the petition, and sent notice to the North Carolina Association, the North Carolina Commissioner and Treasurer, and to all other parties to the rehabilitation proceeding. On September 22, 1978, the Rehabilitation Court held a hearing, at which both Underwriters and the North Carolina Association appeared and presented their respective full-faith-and-credit claims. In an opinion dated November 22, 1978, the Rehabilitation Court held that the 1976 Rehabilitation Plan "fully adjudicated and determined that the North Carolina deposit was an asset of . . . Underwriters, and any claim existing as of the date of adoption of the Plan . . . was compromised, settled and dismissed by the final Order and the Plan." App. to Pet. for Cert. 38A. In reaching this conclusion, the Rehabilitation Court specifically noted that the North Carolina Association had never made any claim to the deposit, even though the $ 100,000 had been included, without objection, in [**1365] the general assets of Underwriters listed in Part V of the Plan. See n. 4, *supra*. The court went on to state that, although it probably had the power to enjoin the North Carolina Association from proceeding in North Carolina, it declined to do so because it believed that the North Carolina state court would recognize its judgment as binding. n8

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n8 The North Carolina Association has appealed this ruling, but the Indiana Court of Appeals stayed consideration of its appeal pending this Court's resolution of this case.

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After receiving the Rehabilitation Court's ruling, Underwriters moved for summary judgment in the North Carolina state trial court, as did the respondents, the North Carolina Association and the North Carolina officials. The trial court [*703] entered summary judgment in favor of the respondents, reasoning that it was the only court with the "requisite subject matter jurisdiction to determine the rights of North Carolina policyholders in the special deposits made by [Underwriters] for their protection." App. to Pet. for Cert. 25A. While noting that the Indiana court did not have *in personam* jurisdiction over the North Carolina officials or over the North Carolina policyholders, the court held that "[an] appearance in the Indiana insolvency proceeding by any of the parties having an interest in the deposit . . . could not constitute a waiver of the Indiana Court's lack of subject matter jurisdiction with regard to the deposit." *Ibid.* As a result, the North Carolina trial court refused to honor the judgment of the Rehabilitation Court. The trial court directed the Commissioner of Insurance to liquidate the deposit to reimburse the North Carolina Association for satisfying the pre-rehabilitation claims of North Carolina policyholders.

On appeal, the North Carolina Court of Appeals affirmed, substantially for the reasons expressed by the trial court. 48 N. C. App. 508, 269 S. E. 2d 688 (1980). The Court of Appeals emphasized that the North Carolina Association sought to protect "statutory," as opposed to "contractual," rights; that title and rights to the $ 100,000 were vested [***570] by law in the State Commissioner and Treasurer, thus depriving the Rehabilitation Court of subject matter jurisdiction over the deposit; and that the Rehabilitation Court did not have *in personam* jurisdiction over these officials. *Id.*, at 517, 269 S. E. 2d, at 694. The Court of Appeals concluded that the deposit could never be an asset of Underwriters, and that the Rehabilitation Court's decision to the contrary was not entitled to full faith and credit. The North Carolina Supreme Court declined to grant discretionary review. 301 N. C. 527, 273 S. E. 2d 453 (1980).

II

The concept of full faith and credit is central to our system of jurisprudence. Ours is a union of States, each having its [*704] own judicial system capable of adjudicating the rights and responsibilities of the parties brought before it. Given this structure, there is always a risk that two or more States will exercise their power over the same case or controversy, with the uncertainty, confusion, and delay that necessarily accompany relitigation of the same issue. See *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948); *Riley v. New York Trust Co.*, 315 U.S. 343, 348-349 (1942). Recognizing that this risk of relitigation inheres in our federal system, the Framers provided that [***571] "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const., Art. IV, § 1. [***572] This Court has consistently recognized that, in order to fulfill this constitutional mandate, "the judgment of a

state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced." *Hampton v. McConnel*, 3 Wheat. 234, 235 (1818) (Marshall, C. J.); *Riley v. New York Trust Co., supra*, at 353. n9

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n9 This construction is also compelled by 28 U. S. C. § 1738, the statutory codification of this constitutional guarantee. This provision requires that HN3 "Acts, records and judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken."

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[1366]**

[*LEdHR2]** [2] LEdHR(2) To be sure, the structure of our Nation as a union of States, each possessing equal sovereign powers, dictates some basic limitations on the full-faith-and-credit principles enumerated above. Chief among these limitations is the caveat, consistently recognized by this Court, that HN4 "a judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits -- had jurisdiction, that is, to render the judgment." *Durfee v. Duke*, 375 U.S. 106, 110 (1963). n10 **[*705]** Consequently, before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of **[***571]** the foreign court's decree. If that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given. See *Nevada v. Hall*, 440 U.S. 410, 421 (1979).

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n10 This limitation flows directly from the principles underlying the Full Faith and Credit Clause. It is axiomatic that a judgment must be supported by a proper showing of jurisdiction over the subject matter and over the relevant parties. One State's refusal to enforce a judgment rendered in another State when the judgment is void for lack of jurisdiction merely gives to that judgment the same "credit, validity, and effect" that it would receive in a court of the rendering State.

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The North Carolina courts relied on this limitation in refusing to give full faith and credit to either the 1976 judgment or the 1978 judgment of the Rehabilitation Court. Respondents argue, and the North Carolina courts held, that the Rehabilitation Court was powerless to determine that the North Carolina deposit was an asset of Underwriters. Specifically, respondents contend that the Rehabilitation Court lacked both jurisdiction over the subject matter and jurisdiction over the relevant parties.

A

[*LEdHR1B]** [1B] LEdHR(1B) **[***LEdHR3A]** [3A] LEdHR(3A) The North Carolina courts held that the Guaranty Act and the Deposit Act deprived the Rehabilitation Court of the subject matter jurisdiction to determine rights in the $ 100,000 deposit. Regardless of the validity of this holding as a matter of North Carolina law, n11 it is not an appropriate ground for **[*706]** refusing to accord the Indiana judgments full faith and credit under the facts of this case. In relying on this ground, the courts below failed to recognize the limited scope of review one court may conduct to determine whether a foreign court had jurisdiction to render a challenged judgment. n12

[*LEdHR3B]** [3B] LEdHR(3B)

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n11 Respondents argue that because North Carolina courts haveexclusive jurisdiction to determine rights in the deposit, they were not required to recognize the Indiana judgment. Even if we accept the argument

that North Carolina courts have exclusive jurisdiction over the subject matter of this litigation, the rule of jurisdictional finality established in Durfee v. Duke, 375 U.S. 106 (1963), would still apply. See *infra*, at 706. Respondents attempt to analogize this claim of exclusive jurisdiction to the exclusive jurisdiction each State has to control the administration of real property within its borders. See Fall v. Eastin, 215 U.S. 1 (1909); *Clarke* v. *Clarke*, 178 U.S. 186 (1900). Respondents fail to recognize, however, that the *Durfee* Court explicitly refused to recognize an exception to the rule of jurisdictional finality for cases involving real property over which the State claims exclusive jurisdiction. 375 U.S., at 115.

n12 Respondents argue that the North Carolina court's determination of its own jurisdiction, as well as its determination that the Rehabilitation Court was without jurisdiction, is now entitled to this same limited scope of review. See Brief for Respondents 40. Although this argument would have force if Underwriters were collaterally attacking the North Carolina court's decision on jurisdiction, see Treinies v. Sunshine Mining Co., 308 U.S. 66, 78 (1939), it has no application to this litigation: Underwriters is seeking direct review of the North Carolina court's judgment. Consequently, Underwriters need only argue that the North Carolina court erred in concluding that the Rehabilitation Court did not fully and fairly determine that it had jurisdiction to adjudicate rights in the deposit.

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[1367]**

[*LEdHR4]** [4]LEdHR(4)This Court has long recognized that HN5"[the] principles of *res judicata* apply to questions of jurisdiction as well as to other issues." *American Surety Co.* v. Baldwin, 287 U.S. 156, 166 (1932). See also Treinies v. Sunshine Mining Co., 308 U.S. 66, 78 (1939); Davis v. Davis, 305 U.S. 32 (1938). Any doubt about this proposition was definitively laid to rest in Durfee v. Duke, *supra*, at 111, where this Court held that HN6"a judgment is entitled to full **[***572]** faith and credit -- even as to questions of jurisdiction -- when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment." n13 The North Carolina courts, therefore, should have determined in the first instance whether the Rehabilitation Court fully and fairly considered the question of subject matter jurisdiction over the North Carolina deposit, **[*707]** with respect to pre-rehabilitation claims of the parties before it. If the matter was fully considered and finally determined in the rehabilitation proceedings, the judgment was entitled to full faith and credit in the North Carolina courts.

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n13 The need for finality within our federal system, see *supra*, at 703-704, applies with equal force to questions of jurisdiction. As this Court stated in Stoll v. Gottlieb, 305 U.S. 165, 172 (1938): "After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first."

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[*LEdHR5A]** [5A]LEdHR(5A)From our examination of the record, we have little difficulty concluding that the Rehabilitation Court fully and fairly considered whether it had subject matter jurisdiction to settle the pre-rehabilitation claims of the parties before it to the North Carolina deposit. As we noted earlier, in addition to being a state court of general jurisdiction, the Rehabilitation Court also has special duties with respect to the rehabilitation of insurance companies. See n. 1, *supra*. In its November 1976 order approving the Rehabilitation Plan, the Rehabilitation Court made it clear that it was asserting both subject matter jurisdiction over all pre-rehabilitation claims against Underwriters, including those of the guaranty associations, and personal jurisdiction over the North Carolina Association and Underwriters. See App. 39, 53. Furthermore, as our recitation of the events leading up to the Rehabilitation Court's 1976 order

indicates, that court was aware of potential claims that the North Carolina Association might assert against Underwriters. In order to ensure that all such claims were definitively resolved during the rehabilitation proceeding, the Rehabilitation Court notified the Association that it *must* either intervene in the rehabilitation proceeding to make objections to, or suggest changes in, the Proposed Plan of Rehabilitation, or specifically waive all such claims. See *supra*, at 698. Finally, the record indicates that, after the North Carolina Association intervened in the rehabilitation proceeding, it negotiated certain changes in Part X(C) of the Proposed Plan of Rehabilitation, concerning Underwriters' liability to the guaranty associations for payments made to Underwriters' policyowners. n14 See *supra*, at 698-699.

[*LEdHR5B]** [5B]LEdHR(5B)

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n14 The North Carolina Association argues that Part X(C) of the Proposed Plan explicitly recognizes its right to assertpre-rehabilitation claims against Underwriters. In its 1978 order, however, the Rehabilitation Court held that the claims asserted by the North Carolina Association in the North Carolina litigation would violate the Plan. App. to Pet. for Cert. 38A. Whether or not this ruling is correct is a matter to be decided by the Indiana courts on direct review, not in the North Carolina courts or in this Court on collateral attack.

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[*708] The North Carolina Association relies on the failure of the Rehabilitation **[***573]** Court either **[**1368]** to specify that it was extinguishing the Association's right to use the $ 100,000 deposit to satisfy pre-rehabilitation obligations, or to address the argument that only North Carolina courts have subject matter jurisdiction to settle rights to the deposit. This reliance is misplaced. First, any doubts that the North Carolina Association may have had concerning the extent to which the Rehabilitation Court purported to exercise its jurisdiction over the Association's rights to the deposit were definitively settled by that court's 1978 ruling. *Supra*, at 702. After considering the arguments now advanced by the North Carolina Association, the Rehabilitation Court ruled that its 1976 order had "fully adjudicated and determined that the North Carolina deposit was an asset of . . . Underwriters, and any claim existing as of the date of adoption of the Plan against the deposit by the North Carolina Association . . . was compromised, settled and dismissed by the final Order and the Plan." n15 App. to Pet. for Cert. 38A.

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n15 Respondents argue that this 1978 order was not a *de novo* reexamination of the jurisdictional question, and therefore is of no independent significance. This argument misperceives the question addressed in the 1978 proceeding. In its 1976 order, the Rehabilitation Court retained jurisdiction over parties to the proceeding to resolve questions of interpretation, implementation, and application of the Plan. App. 42. The question whether the 1976 order included the North Carolina deposit as a general asset, thereby compromising any claim that the North Carolina Association might otherwise have had to the deposit, is clearly a question of interpretation and implementation of the Plan. The 1978 order specifying that the Rehabilitation Plan disposed of the North Carolina Association's pre-rehabilitation rights in the deposit is a binding judgment on the interpretation of the Plan rendered by a court that had retained jurisdiction over the issue. Although the North Carolina Association still may attack the 1978 order on direct appeal, see n. 8, *supra*, that order is entitled to full faith and credit in the North Carolina courts. See 1B J. Moore & T. Currier, Moore's Federal Practice para. 0.416[3] (1980).

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[*709]

[*LEdHR6A]** [6A]LEdHR(6A) **[***LEdHR7]** [7]LEdHR(7)Second, it is undisputed that the Rehabilitation Court had listed the North Carolina deposit as a general asset of Underwriters to be included in the Plan of Rehabilitation. n16 By listing the deposit as a general asset, the Rehabilitation Court announced its intention to assert jurisdiction over pre-rehabilitation claims to the deposit. n17 As an **[***574]** intervening **[*710]** party to the rehabilitation proceeding, the North Carolina Association was obliged to advance its argument that the Rehabilitation Court did not have the authority to settle pre-

rehabilitation claims to the deposit when it was [**1369] given the opportunity to do so. HN7 A party cannot escape the requirements of full faith and credit and res judicata by asserting its own failure to raise matters clearly within the scope of a prior proceeding. See Sherrer v. Sherrer, 334 U.S., at 352. The Indiana Rehabilitation Court gave the North Carolina Association sufficient notice that any pre-rehabilitation claim that it had against the North Carolina deposit, including its argument that the Rehabilitation Court was without jurisdiction to extinguish its claim to the deposit, had to be advanced in the rehabilitation proceeding. No such claim having been made, the Rehabilitation Court finally determined the issue when it approved the Plan, and ruled that all claims inconsistent with the Plan, n18 which could have been presented in the rehabilitation proceeding, were "overruled and relief to that extent denied." App. 40. The issue having been fully and fairly considered by the Indiana court, its final determination was entitled to full faith and credit in North Carolina. n19

[***LEdHR6B] [6B] LEdHR(6B)

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n16 Respondents argue that thedeposit was incorrectly included as a general asset of Underwriters, rather than as a special asset reserved exclusively for the benefit of North Carolina policyowners. The propriety of including the deposit as a general asset, however, is irrelevant to the question whether the deposit was brought to the attention of the Rehabilitation Court. As we have consistently held, HN8 the fact that the rendering court may have made an error of law with respect to a particular question does not deprive its decision of the right to full faith and credit, so long as that court fully and fairly considered its jurisdiction to adjudicate the issue. See *American Express Co.* v. Mullins, 212 U.S. 311 (1909). If the North Carolina Association wished to argue that the Rehabilitation Court should not have included the deposit as a general asset, and consequently should have declined to exercise jurisdiction over the deposit, it should have done so in the rehabilitation proceeding. Having failed to do so, its only recourse is to assert these legal arguments on direct review before the Indiana courts; it cannot raise these contentions in a collateral attack on the judgment.

n17 The document listing the North Carolina deposit as a general asset of Underwriters was called to the North Carolina Association's attention by the North Carolina Commissioner of Insurance as early as March 11, 1975. See E. B. 26. The Association argues that it was misled into believing that the deposit was not before the Rehabilitation Court because the deposit had been listed as a general asset of Underwriters, and not as a deposit held in trust for the sole benefit of North Carolina policyowners. However, the very fact that the $ 100,000 may have been erroneously included as a general asset subject to rehabilitation should have alerted the Association that the Indiana court was purporting to exercise jurisdiction over the deposit, and that, once a final plan of rehabilitation was approved, the Association's claim to use the North Carolina deposit to satisfy pre-rehabilitation obligations might be extinguished. Therefore, the North Carolina Association was obliged to object to this listing, which it believed to be erroneous, or to suffer the consequences.

n18 The North Carolina Association's claim to the deposit is "inconsistent with the plan" because the deposit was included as a general asset of Underwriters, and therefore was included in the pool of resources upon which continued coverage to all policyowners was based.

n19 The concurrence argues that the foregoing discussion of the Rehabilitation Court's assertion of jurisdiction over the deposit is unnecessary to the disposition of this case once it has been established that the court had personal jurisdiction over Underwriters and the North Carolina Association. See *post*, at 718. This argument misperceives both the nature of the jurisdiction asserted by the Rehabilitation Court and the North Carolina Association's challenge to that assertion of jurisdiction. Respondents do not dispute that the Rehabilitation Court had jurisdiction to settle all claims of the parties before it to the assets of Underwriters as part of its attempt to rehabilitate the company. They argue that the Rehabilitation Court's final resolution of claims against *Underwriters* does not preclude their action in North Carolina, however, because the North Carolina deposit *is not an asset of Underwriters*. Consequently, cases such as Riehle v. Margolies, 279 U.S. 218 (1929), and Mayo v. Jones, 329 U.S. 545 (1947), are inapposite to the present situation. In those cases, as the concurrence correctly notes, this Court held that a court need not have

jurisdiction over a debtor's property to determine whether a creditor had a legitimate claim against the debtor so long as it had personal jurisdiction over the creditor and the debtor. Those decisions do not hold, however, that a court with personal jurisdiction over the debtor and the creditor can adjudicate the creditor's claim against property *not belonging to the debtor*.

Given the nature of the North Carolina Association's claim, the Rehabilitation Court's 1976 order must be given full faith and credit in the North Carolina courts so as to bar the Association's claims only if the Rehabilitation Court determined, rightly or wrongly, that the $ 100,000 deposit *was* an asset of Underwriters, and that it therefore had the power to compromise the pre-rehabilitation claims of the parties before it to that asset. As we indicate in text, this was precisely the reasoning used by the Rehabilitation Court in 1978 when it held that the 1976 Plan had compromised the North Carolina Association's claim to the deposit. The only basis asserted by the Rehabilitation Court, which had specifically retained jurisdiction to resolve all questions of interpretation of the Plan, for barring the North Carolina Association from proceeding against the deposit was that the Plan "fully adjudicated and determined that the North Carolina deposit *was an asset of . . . Underwriters*." App. to Pet. for Cert. 38A (emphasis added).

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[*711] B

[*LEdHR1C]** [1C][LEdHR(1C)]Alternatively, **[***575]** respondents argue that the judgment of the Rehabilitation Court was not entitled to full faith and credit because that court lacked *in personam* jurisdiction over the North Carolina policyowners and the state officials. Although under different circumstances these questions might give us pause, it is clear that the Rehabilitation Court had personal jurisdiction over all parties necessary to its determination that the North Carolina Association could not satisfy pre-rehabilitation claims out of the North Carolina deposit.

[*712] Respondents argue that the Rehabilitation Court did not have jurisdiction over the policyowners because no policyowner actually appeared in the rehabilitation proceeding, and because the class representatives could not adequately represent the interests of policyowners in both deposit **[**1370]** and nondeposit States. n20 As a preliminary matter, we note that no North Carolina policyowner has complained about the Rehabilitation Plan, nor did any policyowner directly participate in either the North Carolina litigation or the proceedings before this Court. n21 Furthermore, the North Carolina Association has not identified *any* interest in the North Carolina deposit that a policyowner might have, independent of the interests asserted here by the Association. The class representatives in the rehabilitation proceeding were instructed by the Rehabilitation Court to represent the interests of all past and present policyowners. See n. 20, *supra*. Although the North Carolina Association asserts that these representatives were inadequate, it never explains *why* the policyowners, as compared to the Association, would care whether the deposit was considered a general asset of Underwriters, unavailable for the Association's use in satisfying pre-rehabilitation claims. North Carolina law requires the Association to provide North Carolina policyowners with pre-rehabilitation coverage even if it cannot use the deposit to finance this obligation. See N. C. **[*713]** Gen. Stat. § 58-155.72(4) (Supp. 1981). Therefore, these policyowners have no current interest in whether the North Carolina Association is allowed to liquidate the $ 100,000 deposit. The North Carolina courts' refusal to give the Indiana judgment full faith and credit, accordingly, cannot be supported by the alleged **[***576]** inadequate representation of this unidentified policyowner interest.

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n20 The Rehabilitation Court sent the North Carolina policyowners notice that they were included in the class of policyowners in the rehabilitation proceeding. None of the North Carolina policyowners opted out of this class. In the rehabilitation proceeding, the interests of the policyowners were advocated by the class representatives.

n21 The North Carolina Association argues that the failure of the policyowners to appear in this litigation is not significant, because the Association is the legal representative of the policyowners, empowered to assert any claim that those policyowners might have against either Underwriters or the deposit. We accept this argument for purposes of this decision.

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The argument that the Rehabilitation Court did not have jurisdiction over the North Carolina officials is more complex. n22 The North Carolina Court of Appeals found that the Rehabilitation Court did not have jurisdiction over the trust property or over the statutory trustees. Citing this Court's decision in *Hanson v. Denckla*, 357 U.S. 235 (1958), respondents argue that absent jurisdiction over the trust corpus or the trustee, the Rehabilitation Court was powerless to adjudicate rights in the North Carolina deposit. Therefore, respondents argue, the judgment of the Rehabilitation Court is not entitled to full faith and credit, even as to parties admittedly subject to its jurisdiction.

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n22 The North Carolina Association argues that the State of North Carolina has intentionally made these North Carolina officials necessary but unreachable parties in order to ensure that its courts will have exclusive jurisdiction over all claims concerning rights in any North Carolina deposit. Underwriters contends that, if this is true, the North Carolina statutory scheme violates the Commerce Clause. Because of our resolution of this case, we find it unnecessary to reach this issue.

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Respondents' reliance on *Hanson v. Denckla, supra*, is misplaced. In *Hanson*, this Court considered both a Florida judgment on direct review, and a Delaware judgment refusing to accord full faith and credit to the Florida judgment. Because the Florida judgment was before the Court on direct review, the Court was free to determine whether that court's exercise of jurisdiction over the trust or the trustee was appropriate. This Court determined that the Florida courts were without jurisdiction over either the trust or the trustee **[*714]** who, under Florida law, was a necessary party to a suit to determine the validity of the trust. As a result, of course the Delaware courts were under no obligation to accord full faith and credit to a judgment rendered in a court without jurisdiction.

[1371]**

[*LEdHR8]** [8]LEdHR(8)In this case, however, the Rehabilitation Court's conclusion that it had jurisdiction to compromise the claims of the parties before it to the North Carolina deposit is not presented to this Court on direct review, and we express no opinion on the propriety of this conclusion. Although the Rehabilitation Court did not attempt to exercise jurisdiction over the North Carolina trustees, that court *did* purport to exercise jurisdiction over the trust corpus. n23 The 1978 order specifies that the 1976 Rehabilitation Plan determined that the North Carolina deposit was an asset of Underwriters, subject to the jurisdiction of the Rehabilitation Court. This conclusion may well have been erroneous as a matter of North Carolina law. See *State ex rel. Ingram v. Reserve Insurance Co.*, 303 N. C. 623, 629, 281 S. E. 2d 16, 20 (1981). Erroneous or not, however, this jurisdictional issue was fully **[***577]** and fairly litigated and finally determined by the Rehabilitation Court. Under *Durfee v. Duke*, 375 U.S. 106 (1963), and its progeny, once the Rehabilitation Court determined that the North Carolina Association could not liquidate the deposit to settle pre-rehabilitation claims, the North Carolina courts were required to honor that determination, even though the Rehabilitation Court did not assert personal jurisdiction **[*715]** over the trustees. See *supra*, at 706-707. It is beyond dispute that a court of competent jurisdiction can settle the claims of two competing parties to specific property even though a third party may claim an interest in the same res. See *Morris v. Jones*, 329 U.S. 545 (1947). The Rehabilitation Court held that the Rehabilitation Plan extinguished the claim that the North Carolina Association is now asserting, and the North Carolina courts erred in refusing to give that court's judgment full faith and credit.

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n23 Because we find that the Rehabilitation Court did purport to exercise jurisdiction over the trust, we do not have to address respondents' argument that Indiana law, like the Florida law at issue in *Hanson v. Denckla*, 357 U.S. 235 (1958), requires jurisdiction over the trust or the trustee before rights in a statutory

trust can be compromised. The concurrence, by arguing that personal jurisdiction over Underwriters and the North Carolina Association was sufficient to prevent the Association from litigating its claim to the deposit in North Carolina, seems to imply that *Hanson* is no longer dispositive on this point.

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[*LEdHR1D]** [1D]LEdHR(1D)Respondents argue that requiring North Carolina to give full faith and credit to the Rehabilitation Court's determination that the deposit was an asset of Underwriters, would negate that State's comprehensive statutory scheme to ensure the protection of North Carolina policyowners. Respondents contend that the courts and commentators are virtually unanimous in their support of a State's right to segregate assets of a foreign insurance company to be used for the sole benefit of that State's policyowners. See 2 G. Couch, Insurance Law § 22:96 (2d ed. 1959); 5 J. Joyce, Law of Insurance § 3595 (2d ed. 1918). Cf. *Blake v. McClung*, 172 U.S. 239, 257 (1898). It would not be equitable, respondents conclude, to require North Carolina to honor such a clearly erroneous result. While these arguments may have merit as a matter of insurance law, the only forums in which respondents may challenge the Rehabilitation Court's assertion of jurisdiction on these legal and equitable grounds are in Indiana. n24 The North Carolina Association's decision to assert these arguments in a separate proceeding in North Carolina has resulted in two state courts reaching mutually inconsistent judgments on the same issue. This is precisely the situation the Full Faith and Credit Clause was designed to prevent. **[*716]** Because we find that North Carolina was obligated to give full faith and credit to the judgment of the Rehabilitation Court, we reverse the decision of the North Carolina Court of Appeals and remand for further proceedings not inconsistent with this opinion. n25

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n24 Indeed, in the Indiana appellate court's review of the 1978 order, the North Carolina Association may still have an opportunity to challenge the Rehabilitation Court's conclusion that it had jurisdiction over the deposit.

n25 Underwriters urges us also to dismiss the cross-claim filed by the Commissioner of Insurance and the Treasurer of North Carolina because these state officials are mere "stakeholders" with no real interest in the deposit. Respondents reply that, as statutory trustees, these officials have a vital interest in the administration of deposits under their control. We have concluded that the North Carolina Association may not relitigate its claim to use the deposit to satisfy its obligations to North Carolina policyowners by arguing that the absence of the North Carolina officials deprived the Rehabilitation Court of jurisdiction. On the other hand, we recognize that, as a matter of state law, the North Carolina officials may have an interest in the deposit, independent of that asserted by the North Carolina Association, which was not considered by the Rehabilitation Court. In this Court, the respondent officials merely joined the arguments made by the North Carolina Association, and did not identify any independent claim that they might make against the deposit. Because this is purely a question of state law, on remand the North Carolina courts may determine whether, consistent with this opinion, these officials have any independent interest in the North Carolina deposit that was not determined in the Indiana proceeding.

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[1372]** *It is so ordered.*

CONCUR BY: WHITE

CONCUR: [*578]** JUSTICE WHITE, with whom JUSTICES POWELL and STEVENS join, concurring in the judgment.

I agree with much of the discussion in the majority opinion on the scope and function of the principles of res judicata. I also agree with the majority that "it is clear that the Rehabilitation Court had personal

jurisdiction over all parties necessary to its determination that the North Carolina Association could not satisfy pre-rehabilitation claims out of the North Carolina deposit." *Ante*, at 711.

The only parties over which the Indiana court needed jurisdiction in order to prohibit the Association from moving against the North Carolina deposit were the Association and Underwriters National Assurance Co. (UNAC). It had **[*717]** jurisdiction over the latter in a rehabilitation proceeding, because Indiana was the State of incorporation; it had jurisdiction over the Association because, as the majority opinion amply demonstrates in Part I, the Association appeared before the court as a party and participated in the Rehabilitation Plan. With jurisdiction over UNAC and the Association, the Indiana court clearly had the authority to adjudicate the amount and character of the claim that the Association had against UNAC, including its claim against the North Carolina deposit.

This is true regardless of the jurisdiction the Indiana court may or may not have had over any other parties with potential interests in the controversial deposit. There are at least two such parties: the trustees and the North Carolina policyholders. In my view, the Indiana court did not have jurisdiction to determine the interests of either of these parties in the controverted fund. Neither of these parties appeared before the Indiana court, and I am quite unconvinced that the Indiana court had jurisdiction over the North Carolina deposit in the sense that it could adjudicate the validity of or scale down the lien on that fund held by nonappearing North Carolina policyholders and trustees. I agree with the majority, therefore, that it is proper for this Court to reserve at least the issue of whether the trustees "have an interest in the deposit, independent of that asserted by the North Carolina Association, which was not considered by the Rehabilitation Court." *Ante*, at 716, n. 25. As for the policyholders, as I understand the opinion of the North Carolina court, under North Carolina law the Association was subrogated to the rights of the policyholders when it entered the service contract and undertook to make the policyholders whole. The policyholders thus no longer have an independent interest in the deposit. * See 48 N. C. App. 508, 518, 269 S. E. 2d 688, 694 (1980).

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* Since the policyholders and the Association appear to be the only possible beneficiaries of the trust, the trustees may have no beneficial interest to protect. This, however remains a matter of state law.

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[*718] [*579] [**1373]** The authority of the Indiana court so to resolve the claims of the Association existed regardless of that court's jurisdiction over any particular asset of UNAC, including the North Carolina deposit. In *Riehle v. Margolies*, 279 U.S. 218 (1929), a creditor received a judgment against a corporation in state court. While the creditor's claim was being litigated in state court, a federal court appointed a receiver of the corporation's property. This Court held that the judgment from the state court regarding the creditor's claim had to be recognized as res judicata in the federal court, despite the fact that neither the corporation nor the receiver had undertaken to defend in the state court. The Court adopted a two-fold distinction between control over claims and over assets:

"In so far as [a court order] determines, or recognizes a prior determination of the existence and amount of the indebtedness of the defendant to the several creditors seeking to participate, it does not deal directly with any of the property. [This] function, which is spoken of as the liquidation of a claim, is strictly a proceeding *in personam*. . . . There is no inherent reason why the adjudication of the liability of the debtor *in personam* may not be had in some court other than that which has control of the *res*." *Id.*, at 224.

The reasoning of *Riehle* was specifically applied to judgments between States under the Full Faith and Credit Clause in *Morris v. Jones*, 329 U.S. 545, 549 (1947): "[The] distribution of assets of a debtor among creditors ordinarily has a 'twofold aspect.' It deals 'directly with the property' when it fixes the time and manner of distribution. . . . But proof and allowance of claims are matters distinct from distribution." *Id.*, at 548-549. Thus, in my view, jurisdiction over the deposit is simply not relevant to the question of the res judicata effect of the Indiana court's judgment as to the Association.

[*719] The Rehabilitation Plan fully determined the nature of the claim that the Association would have against UNAC and established the manner in which it could collect on those claims. *Ante*, at 698-700. That decision must be given res judicata effect by the North Carolina court vis-a-vis the Association, unless the Indiana court failed to follow the procedural requirements of the Due Process Clause. I believe those requirements were met in this case, and, therefore, I concur in the judgment of the Court reversing the decision below.

REFERENCES: ◆ Return To Full Text Opinion

◆ Go to Supreme Court Briefs

◆ Go to Oral Argument Transcript

16A Am Jur 2d, Constitutional Law 863; 47 Am Jur 2d, Judgments 1254, 1258

Federal Procedure, L Ed, Judgments and Orders 51:223

15 Am Jur Pl & Pr Forms (Rev), Judgments, Forms 611 et seq.

USCS, Constitution, Article IV, Section 1

US L Ed Digest, Judgment 369

L Ed Index to Annos, Full Faith and Credit; Judgment

ALR Quick Index, Foreign Judgments; Full Faith and Credit

Federal Quick Index, Foreign Judgments and Decrees; Full Faith and Credit

Annotation References:

Forum's application of its domestic law in actions on insurance contracts as violating due process or full faith and credit clause of Federal Constitution. 99 L Ed 88.

Res judicata as affected by limitation of jurisdiction of court which rendered judgment. 83 ALR2d 977.

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*140 Ohio App. 3d 32, *; 746 N.E.2d 642, **;
2000 Ohio App. LEXIS 2009, ****

DEBRA R. WALKER and HAMILTON COUNTY CHILD SUPPORT ENFORCEMENT AGENCY, Plaintiffs-Appellants, vs. EDGAR AMOS, III, Defendant-Appellee.

APPEAL NO. C-990373

COURT OF APPEALS OF OHIO, FIRST APPELLATE DISTRICT, HAMILTON COUNTY

140 Ohio App. 3d 32; 746 N.E.2d 642; 2000 Ohio App. LEXIS 2009

May 12, 2000, Date of Judgment Entry on Appeal

NOTICE: [*1]** THESE ARE NOT OFFICIAL HEADNOTES OR SYLLABI AND ARE NEITHER APPROVED IN ADVANCE NOR ENDORSED BY THE COURT. PLEASE REVIEW THE CASE IN FULL.

SUBSEQUENT HISTORY:

Reporter's Note: The court *sua sponte* removed this case from the accelerated calender.

PRIOR HISTORY: Civil Appeal From: Hamilton County Court of Common Pleas, Division of Domestic Relations. TRIAL NO. DR9400726.

DISPOSITION: Judgment Appealed From Is: Vacated.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiffs, mother and enforcement agency, appealed from the Hamilton County Court of Common Pleas, Division of Domestic Relations (Ohio), which modified, by suspending, a child support order from another state where plaintiff mother and her child still resided.

OVERVIEW: Plaintiff mother and defendant father were the parents of one child. Plaintiff mother and the child resided in Indiana, while defendant resided in Ohio. Defendant was obligated to pay child support pursuant to a foreign support order. Plaintiff agency filed contempt motions against defendant for failing to meet his support obligations. The lower court granted defendant's motion to dismiss the contempt proceedings and suspended defendant's obligation to make child-support payments. On appeal, the court reversed the decision because the trial court lacked subject-matter jurisdiction to suspend defendant's child-support obligations established in the initiating state's orders. Plaintiffs' action was a "traditional" Uniform Reciprocal Enforcement of Support (URESA) law proceeding because the action was not filed with any registry and the notice provided to defendant did not indicate a registered URESA action. The trial court also lacked jurisdiction to modify the order under Ohio's Uniform Interstate Family Act or the Full Faith and Credit for Child Support Orders Act, 28 U.S.C.S. § 1738.

OUTCOME: Judgment was vacated because the trial court had no subject-matter jurisdiction to suspend the foreign support order.

CORE TERMS: support order, child-support, initiating, modify, responding, obligor, reside, registered, registration, modification, jurisdiction to modify, contempt, subject-matter, modified, foreign support order, child support, arrearage, register, issuing, obligee, conform, deleted, exclusive jurisdiction, notice, duty of support, continuance, suspension, resident, jurisdiction to enforce, child support order

LexisNexis(R) Headnotes + Hide Headnotes

Family Law > Child Support > Obligation > Enforcement > Debtor Creditor

HN1 Ohio's Uniform Reciprocal Enforcement of Support law (URESA) process commences when the obligee, i.e., the custodial parent, files a petition in the state in which the obligor resides. If the court in this "initiating" state reviews the petition and determines the obligor owes a duty of support, the proceeding is certified to the "responding state," i.e., where the obligor resides. The "*responding court" must then issue an order to enforce the obligor's pre-existing support obligation* from the initiating state. The URESA process merely enforces a support order that was previously established by an initiating state. Thus, when Ohio is the responding state in a "traditional" URESA proceeding to enforce a duty of support, the court must conform its order to the amount determined in the previous order. More Like This Headnote | *Shepardize:* Restrict By Headnote

Family Law > Child Support > Obligations > Enforcement > General Overview

HN2 Ohio courts recognize two enforcement proceedings under Ohio's Uniform Reciprocal Enforcement of Support law. More Like This Headnote

Family Law > Child Support > Obligations > Enforcement > General Overview

Walker v. Amos, 140 Ohio App. 3d 32 (Copy w/ Cite)

*1999 Ohio App. LEXIS 3822, **

IN RE: NATHANIEL SYBENGA

C.A. CASE No. 17622

COURT OF APPEALS OF OHIO, SECOND APPELLATE DISTRICT, MONTGOMERY COUNTY

1999 Ohio App. LEXIS 3822

August 20, 1999, Rendered

PRIOR HISTORY: **[*1]** T.C. CASE NO. 97-3632.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant mother challenged judgment of the trial court, which denied appellant's motion to vacate its judgment finding parties' child emancipated and ordering a reduction of child support appellee father was required to pay.

OVERVIEW: A court in Massachusetts, where appellant mother lived, ordered appellee father to make monthly payments for the support of the parties' child. Subsequently, the trial court in Ohio, where appellee father had moved, found that the parties' child was emancipated and reduced the child support payments. Appellant mother argued that the trial court did not have jurisdiction, and, thus, the reduction was void. The court agreed, holding that, under federal law, Massachusetts courts retained exclusive jurisdiction to modify the child support order. The court also noted that it had the inherent authority to vacate the void judgment.

OUTCOME: The judgment denying appellant mother's motion to vacate a judgment reducing appellee father's obligation under a child support order was reversed, as the trial court did not have subject matter jurisdiction over the order.

CORE TERMS: void ab initio, emancipated, child support, void judgment, minor child, assignments of error, motion to vacate, vacate, child support order, duty of support, inherent power, support order, high school, full time, termination, accredited, modified, enrolled, resident, custody, obligor, resides, lacked jurisdiction, total amount, modification, emancipation

LexisNexis(R) Headnotes + Hide Headnotes

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Full Faith & Credit > Enforcement of Judgments

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Full Faith & Credit > Full Faith & Credit Statute

Family Law > Child Support > Jurisdiction > Exclusive Jurisdiction

HN1 ¶ Under the Uniform Reciprocal Support Enforcement Act (URESA), each state must enforce, according to its terms, a child support order made consistently with URESA statutes by another state which has continuing and exclusive jurisdiction over the issue of child support. 28 U.S.C.S. § 1738B. More Like This Headnote

Civil Procedure > Judgments > Relief From Judgment > Void Judgments

Governments > Courts > Authority to Adjudicate

HN2 ¶ The authority to vacate a void judgment is not derived from Ohio R. Civ. P. 60(B), but it is an inherent power possessed by Ohio courts. The Court of Appeals of Ohio, Second Appellate District,

Montgomery County, holds that Ohio courts have the inherent power to vacate a void judgment at any time. More Like This Headnote

COUNSEL: L. ANTHONY LUSH, Dayton, Ohio, Attorney for Plaintiff-Appellant, Elizabeth Sybenga.

ERIC SYBENGA, Dayton, Ohio, Defendant-Appellee, Pro Se.

JUDGES: FREDERICK N. YOUNG, J. GRADY, P.J., and WOLFF, J., concur.

OPINION BY: FREDERICK N. YOUNG

OPINION: OPINION

FREDERICK N. YOUNG, J.

Elizabeth Sybenga, the mother of Nathaniel Sybenga, is appealing from the decision of the trial court overruling her motion to vacate its earlier decision finding that Nathaniel was emancipated and, as a consequence, reducing the total amount of child support that his father, Eric Sybenga, had been ordered to pay to Elizabeth n1 . The grounds of the motion was that the decision was void ab initio because the court lacked jurisdiction to modify the support decree.

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n1 For purposes of clarity, the parties will be referred to by their first names.

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Appellee, Eric Sybenga, did not file a brief. We take the following facts, therefore, from the brief of the appellant, as we are allowed to do by App.R. 18(C). **[*2]** The parties were divorced in the Commonwealth of Massachusetts by virtue of a Judgment of Divorce Nisi dated August 1, 1994. They entered into an agreement allocating all aspects of support, custody, visitation, and property, which was attached and incorporated into the Final Decree of Divorce. Subsequently, the issues of custody and support were modified by the Massachusetts Probate and Family Court on September 4, 1996. The present action began with a petition to enforce that modified order of support in accordance with the Uniform Reciprocal Support Enforcement Act (URESA), filed on May 29, 1997, by the Commonwealth of Massachusetts in Montgomery County, Ohio. At the time of the divorce, appellant Elizabeth was and remains to this day a resident and domiciliary of Massachusetts, and the three children live there with her. Appellee, Eric, moved to Ohio, however, and was not in compliance with the Massachusetts URESA child support order of $ 174.94 per week. The Massachusetts court did not specify any amount per child. After a hearing, but without notice or service on the appellant n2, the trial court in Montgomery County, Ohio, found one child, Nathaniel, to be emancipated and altered **[*3]** the amount of support to $ 379.04 per month for the remaining two children. This was an Agreed Entry filed December 23, 1997, between the Montgomery County Prosecutor's Office and appellee, Eric.

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n2 However, the Massachusetts government office which filed the petition was notified of the proceedings.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

When appellant, Elizabeth, learned of the emancipation and resulting modification of child support, she entered a limited appearance through counsel and moved to vacate the order on the grounds the trial court lacked jurisdiction and the order was therefore void ab initio. By decision and judgment filed December 29, 1998, the trial court denied the motion to vacate with the following explanation:

ORC Ann. 3115.06

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* CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY *
* AND FILED WITH THE SECRETARY OF STATE THROUGH NOVEMBER 21, 2006 *
* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2006 *

TITLE 31. DOMESTIC RELATIONS -- CHILDREN
CHAPTER 3115. UNIFORM INTERSTATE FAMILY SUPPORT ACT
PROCEEDINGS INVOLVING TWO OR MORE STATES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

ORC Ann. 3115.06 (2006)

§ 3115.06. Exercise of jurisdiction in Ohio where pleading also filed in another state

(A) A tribunal of this state may exercise jurisdiction to issue a support order if the complaint or comparable pleading is filed in this state after a complaint or comparable pleading requesting the issuance of a support order is filed in another state only if all of the following apply:

(1) The complaint or comparable pleading is filed in this state 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;

(3) With respect to actions to issue child support orders, this state is the home state of the child.

(B) A tribunal of this state may not exercise jurisdiction to issue a support order if the complaint or comparable pleading is filed in this state before a complaint or comparable pleading requesting the issuance of a support order is filed in another state if any of the following is the case:

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

(2) The contesting party timely challenges the exercise of jurisdiction in this state.

(3) With respect to actions to issue child support orders, the other state is the home state of the child.

History:

147 v H 352. Eff 1-1-98.

Section Notes:

Not analogous to former RC § 3115.06 (134 v H 504), repealed by 147 v H 352, § 2, eff 1-1-98.

Not analogous to former RC § 3115.06, amended and renumbered RC § 3115.09 in 134 v H 504, eff 10-27-71.

The effective date is set by section 4 of HB 352.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Orders issued prior to 1-1-98, RC § 3115.57.

OH Administrative Code:

Uniform Interstate Family Support Act (UIFSA) --

Proceeding involving two or more states: OAC 5101:1-30-53.

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544e. Penalties for noncompliance
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547. Procedure to register child-support order of another state for modification
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547b. Modification of child-support order of another state
547c. Recognition of order modified in another state
547d. Jurisdiction to modify child-support order of another state when individual parties reside in Puerto Rico
547e. Notice to issuing tribunal of modification
548. Proceeding to determine parentage
548a. Grounds for rendition
548b. Conditions of rendition
548c. Appropriate forum

§ 541. Definitions

In this chapter:

(1) *Child.*—Means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) *Child-support order.*—Means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) *Duty of support.*—Means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) *Home state.*—Means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

) *Income.*—Includes earnings or other periodic entitlements to money ı any source and any other property subject to withholding for support ɜr the law of Puerto Rico.

) *Income-withholding order.*—Means an order or other legal process cted to an obligor's employer or other debtor, as defined by the me-withholding law of Puerto Rico, to withhold support from the me of the obligor.

) *Initiating state.*—Means a state from which a proceeding is forded or in which a proceeding is filed for forwarding to a responding e under this chapter or a law or procedure substantially similar to this pter, the Uniform Reciprocal Enforcement of Support Act, or the ised Uniform Reciprocal Enforcement of Support Act.

3) *Initiating tribunal.*—Means the authorized tribunal in an initiating .e.

9) *Issuing state.*—Means the state in which a tribunal issues a support er or renders a judgement determining parentage.

10) *Issuing tribunal.*—Means the tribunal that issues a support order renders a judgement determining parentage.

11) *Law.*—Includes decisional and statutory law and rules and regulas having the force of law.

12) *Obligee.*—Means:

(a) An individual to whom a duty of support is or is alleged to be owed in whose favor a support order has been issued or a judgement ermining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of port or support order have been assigned or which has independent ms based on financial assistance provided to an individual obligee, or

(c) an individual seeking a judgement determining parentage of the ividual's child.

13) *Obligor.*—Means an individual, or the state of a decedent:

(a) Who owes or is alleged to owe a duty of support;

(b) who is alleged but has not been adjudicated to be a parent of a ld, or

(c) who is liable under a support order.

14) *Register.*—Means to record a support order or judgement deterning parentage in the appropriate location for the recording or filing of eign judgements generally or foreign support orders specifically.

15) *Registering tribunal.*—Means a tribunal in which a support order is istered.

16) *Responding state.*—Means a state in which a proceeding is filed or which a proceeding is forwarded for filing from an initiating state under

this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) *Responding tribunal.*—Means the authorized tribunal in a responding state.

(18) *Spousal-support order.*—Means a support order for a spouse or former spouse of the obligor.

(19) *State.*—Means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

(a) An Indian tribe, and

(b) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) *Support enforcement agency.*—Means a public official or agency authorized to seek:

(a) Enforcement of support orders or laws relating to the duty of support;

(b) establishment or modification of child support;

(c) determination of parentage, or

(d) to locate obligors or their assets.

(21) *Support order.*—Means a judgement, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a 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.

(22) *Tribunal.*—Means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.—Dec. 20, 1997, No. 180, art. 1, § 101.

HISTORY

Statement of motives.

See Laws of Puerto Rico:

Dec. 20, 1997, No. 180.

Title.

Article 9, § 902 of Act Dec. 20, 1997, No. 180, provides: "This Act [this chapter] may be cited as the Uniform Interstate Family Support Act."

Separability.

Article 9, § 903 of Act Dec. 20, 1997, No. 180, provides: "If any provision of this Act [this chapter] or its application to any person or circumstance is held invalid, the invalidity does not

affect other provisions or applications of this Act [this chapter] which can be given effect without the invalid provision or application, and to this end the provisions of this Act [this chapter] are severable."

Special provisions.

Article 9, § 901 of Act Dec. 20, 1997, No. 180, provides: "*Uniformity of Application and Construction.* This Act [This chapter] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act [this chapter] among states enacting it."

Article 9, § 905 of Act Dec. 20, 1997, No. 180, provides: "*Discrepancy between Spanish and English text.* In cases of a discrepancy between the English text of this Act [this chapter] know as the Uniform Interstate Family Support Act and the Spanish text, the English text shall prevail."

ANNOTATIONS

1. **Generally.** Upon adopting the Uniform Interstate Family Support Act, Puerto Rico entered into a reciprocal relationship with the other states and territories. Aponte v. Barbosa Dieppa, 146 D.P.R. 558 (1998).

Sections 541 through 548c of this title are a statute of essentially remedial character, whose purpose is to establish a uniform process to effectuate the execution of a support order of one state in another, and as such, it should be applied retroactively. Aponte v. Barbosa Dieppa, 146 D.P.R. 558 (1998).

Sections 541 through 548c of this title establish a system of one order, of which it is supported by the principle of continuing and exclusive jurisdiction of the courts that render a support order or determination of paternity, established in § 542d of this title; one of the most essential and important provisions of this statute. Aponte v. Barbosa Dieppa, 146 D.P.R. 558 (1998).

§ 541a. Tribunal of State

The General Court of Justice and the Administration for Child Support created by §§ 501 et seq. of this title, are the tribunals of Puerto Rico.—Dec. 20, 1997, No. 180, art. 1, § 102.

§ 541b. Cumulative remedies

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.—Dec. 20, 1997, No. 180, art. 1, § 103.

§ 542. Bases for jurisdiction over nonresident

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of Puerto Rico may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) The individual is personally served within Puerto Rico;

(2) the individual submits to the jurisdiction of Puerto Rico by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in Puerto Rico;

(4) the individual resided in Puerto Rico and provided prenatal expenses or support for the child;

(5) the child resides in Puerto Rico as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in Puerto Rico and the child may have been conceived by that act of intercourse;

(7) the individual asserted parentage in the putative father registry maintained in Puerto Rico by the appropriate agency, or

(8) there is any other basis consistent with the constitutions of Puerto Rico and the United States for the exercise of personal jurisdiction.—Dec. 20, 1997, No. 180, art. 2, § 201.

§ 542a. Procedure when exercising jurisdiction over nonresident

A tribunal of Puerto Rico exercising personal jurisdiction over a nonresident under § 542 of this title may apply § 543o of this title to receive evidence from another state, and § 543q of this title to obtain discovery through a tribunal of another state. In all other respects, §§ 543-548 of this title do not apply and the tribunal shall apply the procedural and substantive law of Puerto Rico, including the rules on choice of law other than those established by this title.—Dec. 20, 1997, No. 180, art. 2, § 202.

§ 542b. Initiating and responding tribunal of state

Under this chapter, a tribunal of Puerto Rico may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.—Dec. 20, 1997, No. 180, art. 2, § 203.

§ 542c. Simultaneous proceedings in another state

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

(1) The petition or comparable pleading in Puerto Rico 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, Puerto Rico is the home state of the child.

(b) A tribunal of Puerto Rico may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

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

(2) the contesting party timely challenges the exercise of jurisdiction in Puerto Rico, and

(3) if relevant, the other state is the home state of the child.—Dec. 20, 1997, No. 180, art. 2, § 204.

§ 542d. Continuing, exclusive jurisdiction

(a) A tribunal of Puerto Rico issuing a support order consistent with the law of Puerto Rico has continuing, exclusive jurisdiction over a child-support order:

(1) As long as Puerto Rico 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 Puerto Rico for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of Puerto Rico issuing a child-support order consistent with the law of Puerto Rico may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter.

(c) If a child-support order of Puerto Rico is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, a tribunal of Puerto Rico loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in Puerto Rico, and may only:

(1) Enforce the order that was modified as to amounts accruing before the modification;

(2) enforce nonmodifiable aspects of that order, and

(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of Puerto Rico 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.

(f) A tribunal of Puerto Rico issuing a support order consistent with the law of Puerto Rico has continuing, exclusive jurisdiction over a spousal-support order throughout the existence of the support obligation. A

tribunal of Puerto Rico may not modify a spousal-support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.—Dec. 20, 1997, No. 180, art. 2, § 205.

ANNOTATIONS

1. **Generally.** A court that renders a support order for the benefit of a minor loses its continuing and exclusive jurisdiction in two forms: (1) when all the parties are no longer residing in the state, or (2) when all the parties have consented in writing that the court of another state modify the order and assume continuing and exclusive jurisdiction. Aponte v. Barbosa Dieppa, 146 D.P.R. 558 (1998).

§ 542e. Enforcement and modification of support order by tribunal having continuing jurisdiction

(a) A tribunal of Puerto Rico may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of Puerto Rico having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply § 543o of this title to receive evidence from another state and § 543q of this title to obtain discovery through a tribunal of another state.

(c) A tribunal of Puerto Rico which lacks continuing, exclusive jurisdiction over a spousal-support order may not serve as a responding tribunal to modify a spousal-support order of another state.—Dec. 20, 1997, No. 180, art. 2, § 206.

§ 542f. Recognition of controlling child-support order

(a) If a proceeding is brought under this chapter and only one tribunal has issued a child-support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this chapter, and two or more child-support orders have been issued by tribunals of Puerto Rico or another state with regard to the same obligor and child, a tribunal of Puerto Rico shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current

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*** CURRENT THROUGH P.L. 109-374, APPROVED 11/27/2006 ***

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART V. PROCEDURE
CHAPTER 115. EVIDENCE; DOCUMENTARY

Practitioner's Toolbox

History

Interpretive Notes and Decisions

History; Ancillary Laws and Directives

Resources & Practice Tools

Related Statutes & Rules

Research Guide

Annotations:

Validity, Construction, and Application of Full Faith and Credit for Child Support Orders Act (FFCCSOA): 28 U.S.C.A. § 1738B [28 USCS § 1738B]--State Cases, 18 ALR6th 97.

Construction and Application of Uniform Interstate Family Support Act: 90 ALR5th 1.

More...

Go to Code Archive Directory for this Jurisdiction

28 USCS § 1738B

§ 1738B. Full faith and credit for child support orders

(a) General rule. The appropriate authorities of each State--
(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and
(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

(b) Definitions. In this section:
"child" means--
(A) a person under 18 years of age; and
(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.
"child's State" means the State in which a child resides.
"child's home State" means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.
"child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.
"child support order"--
(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and
(B) includes--
(i) a permanent or temporary order; and
(ii) an initial order or a modification of an order.
"contestant" means--
(A) a person (including a parent) who--
(i) claims a right to receive child support;
(ii) is a party to a proceeding that may result in the issuance of a child support order; or
(iii) is under a child support order; and
(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.
"court" means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.
"modification" means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.
"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title

18).

(c) Requirements of child support orders. A child support order made by a court of a State is made consistently with this section if--

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)--

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) Continuing jurisdiction. A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) Authority to modify orders. A court of a State may modify a child support order issued by a court of another State if--

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2) (A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(f) Recognition of child support orders. If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only 1 court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) Enforcement of modified orders. A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) Choice of law.

(1) In general. In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) Law of state of issuance of order. In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) Period of limitation. In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) Registration for modification. If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

History:

(Added Oct. 20, 1994, P.L. 103-383, § 3(a), 108 Stat. 4064; Aug. 22, 1996, P.L. 104-193, Title III, Subtitle C, § 322, 110 Stat. 2221; Aug. 5, 1997, P.L. 105-33, Title V, Subtitle F, Ch 3, § 5554, 111 Stat. 636.)

History; Ancillary Laws and Directives:

1. Amendments
2. Other provisions

1. Amendments:

1996. Act Aug. 22, 1996 (effective as provided by § 395 of such Act, which appears as 42 USCS § 654 note), in subsec. (a)(2), substituted "subsections (e), (f), and (i)" for "subsection (e)"; in subsec. (b), inserted the paragraph defining "child's home State"; in subsec. (c), in the introductory matter, inserted "by a court of a State" and, in para. (1), inserted "and subsections (e), (f), and (g)"; in subsec. (d), inserted "individual" and substituted "subsections (e) and (f)" for "subsection (e)"; in subsec. (e), in the introductory matter, substituted "modify a child support order issued" for "make a modification of a child support order with respect to a child that is made", in para. (1), inserted "pursuant to subsection (i)", in para. (2), inserted "individual" wherever appearing and, in subpara. (B), substituted "with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume" for "to that court's making the modification and assuming"; redesignated subsecs. (f) and (g) as subsecs. (g) and (h), respectively; added new subsec. (f); in subsec. (g) as redesignated, in the heading, substituted "modified" for "prior" and, in the text, substituted "subsections (e) and (f)" for "subsection (e)"; in subsec. (h) as redesignated, in para. (2), inserted "including the duration of current payments and other obligations of support" and, in para. (3), inserted "arrears under"; and added subsec. (i).

1997. Act Aug. 5, 1997, § 5554 (effective as if included in the enactment of Title III of Act Aug. 22, 1997, P.L. 104-193, as provided by § 5557 of the 1997 Act, which appears as 42 USCS § 608 note), in subsec. (f), in para. (4), substituted "a court having jurisdiction over the parties shall issue a child support order, which must be recognized." for "a court may issue a child support order, which must be recognized." and, in para. (5), inserted "under subsection (d)".

2. Other provisions:

Congressional findings, statement of policy, and declaration of purposes. Act Oct. 20, 1994, P.L. 103-383, § 2, 108 Stat. 4063, provides:

"(a) Findings. The Congress finds that--

"(1) there is a large and growing number of child support cases annually involving disputes between parents who reside in different States;

"(2) the laws by which the courts of different jurisdictions determine their authority to establish child support orders are not uniform;

"(3) those laws, along with the limits imposed by the Federal system on the authority of each State to take certain actions outside its own boundaries--

"(A) encourage noncustodial parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States, resulting in an increase in the amount of interstate travel and communication required to establish and collect on child support orders and a burden on custodial parents that is expensive, time consuming, and disruptive of occupations and commercial activity;

"(B) contribute to the pressing problem of relatively low levels of child support payments in interstate cases and to inequities in child support payments levels that are based solely on the noncustodial parent's choice of residence;

"(C) encourage a disregard of court orders resulting in massive arrearages nationwide;

"(D) allow noncustodial parents to avoid the payment of regularly scheduled child support payments

for extensive periods of time, resulting in substantial hardship for the children for whom support is due and for their custodians; and

"(E) lead to the excessive relitigation of cases and to the establishment of conflicting orders by the courts of various jurisdictions, resulting in confusion, waste of judicial resources, disrespect for the courts, and a diminution of public confidence in the rule of law; and

"(4) among the results of the conditions described in this subsection are--

"(A) the failure of the courts of the States to give full faith and credit to the judicial proceedings of the other States;

"(B) the deprivation of rights of liberty and property without due process of law;

"(C) burdens on commerce among the States; and

"(D) harm to the welfare of children and their parents and other custodians.

"(b) Statement of policy. In view of the findings made in subsection (a), it is necessary to establish national standards under which the courts of the various States shall determine their jurisdiction to issue a child support order and the effect to be given by each State to child support orders issued by the courts of other States.

"(c) Purposes. The purposes of this Act [this section and this note] are--

"(1) to facilitate the enforcement of child support orders among the States;

"(2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and

"(3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders.".

Notes:

Related Statutes & Rules:

Full faith and credit given to judicial proceedings of state, territory, or possession, generally, 28 USCS § 1738.

Full faith and credit given to child custody determinations, 28 USCS § 1738A.

Research Guide:

Federal Procedure:

17 Fed Proc L Ed, Health, Education, and Welfare § 42:703.

Am Jur:

23 Am Jur 2d, Desertion and Nonsupport §§ 73, 79, 80.

24A Am Jur 2d, Divorce and Separation § 1079, 1097, 1156, 1186, 1187, 1190.

Annotations:

Validity, Construction, and Application of Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C.A. § 1738B [28 USCS § 1738B]--State Cases. 18 ALR6th 97.

Construction and Application of Uniform Interstate Family Support Act. 90 ALR5th 1.

Interpretive Notes and Decisions:

Under 28 USCS §§ 1738, 1738B, bankruptcy court had to give preclusive effect to California's statutes which mandated accrual of interest on debtor's nondischarged unpaid child support and application of child support payments. Witaschek v Sacramento County Bureau Family Support (In re Witaschek) (2002, BC ND Okla) 276 BR 668.

Where mother and child were residents of Kentucky and father was resident of South Dakota at time of registration of 1994 order in South Dakota, neither party nor child were residents of Ohio, and thus, under terms of 28 USCS § 1738B(i), 1994 order was required to be registered in South Dakota since state had jurisdiction over father, based on his residency, and Ohio no longer had continuing, exclusive jurisdiction because it was no longer child's residence and it was not residence of any of parties. Barnes v Matzner (2003) 2003 SD 42, 661 NW2d 372.

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