

ORIGINAL

NO. 10-0985

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 93460

RUBY K. PULA, ET. AL.

Plaintiff-Appellant

-vs-

ADRIENNE HAUNANI PULA-BRANCH

Defendant-Appellee

**MOTION TO STAY COURT OF APPEALS JUDGMENT PENDING APPEAL,
FILED PURSUANT TO S.CT.R.P. XIV, § 4(A)**

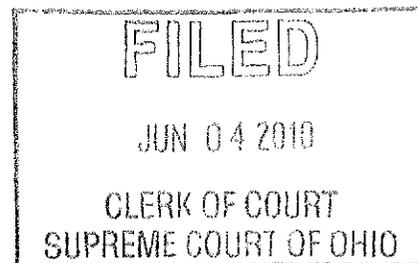
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Respondent-Appellee

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MOTION TO STAY

I. SUMMARY OF ARGUMENT

The decision in this case of the Eighth District Court of Appeal (Eighth District) should be stayed until this Court decides whether to exercise jurisdiction. The Eighth District's decision, which finds that the Cuyahoga County Domestic Relations Court (Domestic Relations Court) lacks subject matter jurisdiction relative to unmarried parties to adjudicate cases under the Uniform Interstate Family Support Act (UIFSA), has wide-ranging implications concerning paternity findings and support orders issued by that Court. See *Pula v. Pula-Branch*, Cuyahoga App. No. 93460, 2010-Ohio-912.

II. PROCEDURAL HISTORY

In this case, the Domestic Relations Court established an interstate child support order against Adrienne Haunani Pula-Branch, mother of K.G.P., a minor child, on behalf of the child's grandmother and caretaker, Ruby Pula. The CSEA appealed because of the Domestic Relations Court's error in failing to include income information from the child's father when calculating the child support guideline figures, which decision was contrary to R.C. 3119.07(C), the pertinent law. The Eighth District upon appeal reversed and remanded, holding that the Domestic Relations Court was without subject matter jurisdiction to adjudicate a support matter under the UIFSA where the parties are unmarried; and, finding that the lower court's order was void *ab initio*, instructed that it vacate its order.

The CSEA has asked this Court to accept jurisdiction.

III. LAW AND ANALYSIS

Under S. Ct. Prac. R. XIV, § 4(A), a party may request a stay of an appellate court decision.

It is the position of the CSEA that various provisions of the Ohio Revised Code (O.R.C.) vest the Domestic Relations Court with jurisdiction to hear interstate cases in every instance, including when parties were unmarried. Subject matter jurisdiction was granted specifically to the Domestic Relations Court when the Uniform Reciprocal Enforcement of Support Act (URESA) was the law governing interstate states; and once the UIFSA succeeded the URESA on January 1, 1998, not only was there nothing that divested the Domestic Relations Court of any of its jurisdiction relative to interstate cases, but sections of the Revised Code continued to vest the Domestic Relations Court with jurisdiction to handle all interstate cases, including for parties who were unmarried.

Under the UIFSA, a tribunal is defined as any trial court of record of this state. R.C. 3115.01(X). As a trial court of record in this state, the Domestic Relations Court is a tribunal under the terms of the UIFSA, and an authorized responding tribunal pursuant to O.R.C. 3115.01(R).

The term “tribunal” or “tribunal of this state” is used approximately forty-seven times throughout the UIFSA statutes. For example, O.R.C. 3115.50 provides that a tribunal of this state has jurisdiction to enforce and to modify the issuing state’s order in a proceeding to register that order. Moreover, O.R.C. 3115.52 (A) provides that a tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought to establish paternity under O.R.C. §§ 3115.01 to 3115.59. It is noteworthy here that most paternity actions under the UIFSA involve parties who are not married.

It is the CSEA’s position that a clear reading of the law supports that the Domestic Relations Court as a trial court of record in the State of Ohio is duly authorized by the legislature to have jurisdiction over all interstate cases under the

UIFSA, including those involving unmarried parties; and that the Eighth District's reading of O.R.C. 2301.03 is unsupported when considered with all sections of the O.R.C. that govern the UIFSA.

Additionally, it is the position of the CSEA that relative to matters under the UIFSA, O.R.C. 2151.23, read in *pari material* with other relevant statutes, creates concurrent jurisdiction with the Domestic Relations and Cuyahoga County Juvenile Courts in cases involving unmarried parties. It is of great significance that O.R.C. 2151.23(A), which grants **exclusive original jurisdiction** to the Juvenile Court, specifically excludes matters ancillary to an action for divorce, dissolution of marriage, annulment or legal separation, and an action for support brought under Chapter 3115 (the UIFSA); while O.R.C. 2151.23(B) grants the Juvenile Court **original jurisdiction** for actions brought under Chapter 3115 (the UIFSA). The distinction between O.R.C. 2151.23(A), i.e., delegation of exclusive original jurisdiction, and O.R.C. 2151.23 (B), i.e., delegation of original jurisdiction, indicates that it was the intent of the Ohio Legislature to grant concurrent jurisdiction to other courts over interstate matters involving unmarried parties.

The areas affected by the *Pula* decision are numerous, and the impact far reaching. First, considering the numerous affected areas, they include but are not necessarily limited to the areas listed below:

- Enforcement – Past and present, including tax intercepts, drivers' license suspensions; the CSEA's loss of ability to file enforcement actions on cases made void;
- Lump sum awards – Those already awarded and dispensed, and those pending;
- Social Security benefits;
- Rights to receive inheritances;

- Emancipations – For those stays of disbursement which were done in Domestic Relations Court; the CSEA’s loss of ability to obtain court orders staying and holding support and emancipating children on cases whose orders made void by the Pula decision;
- Domestic Relation orders presently in place under the UIFSA and that the CSEA is enforcing;
- Obligors who have been jailed for failure to purge after being found in contempt;
- Obligors who have been jailed for criminal non support actions that started out as UIFSA cases;
- Loss of determinations of paternity;
- Suspension of all CSEA administrative actions;
- Suspension of registrations and enforcement by other states;
- Notification of the other 49 states and foreign countries of the impact of the Court’s decision on their cases;
- Cases already reported to the Federal Case Registry, the Query Interstate Cases for Kids (QUICK), the State Verification Exchange System (SVES) and Defense Manpower Data Center (DMDV);
- Liens;
- Credit reporting;
- Now adult children who have paternity findings and want to inherit.

Next, considering the certain and far-reaching impact: in short, it is immeasurable. Under the UIFSA, the Domestic Relations Court has issued thousands of orders establishing paternity and support. Additionally, it has issued hundreds, and probably more realistically, thousands of support orders in cases under the UIFSA wherein the parties never married but paternity was established either in another jurisdiction or pursuant to a paternity acknowledgment process. Numerous obligors have been incarcerated as the result of being found in civil contempt by the Domestic Relations Court in cases under the UIFSA where the parties never married.

The result of void orders would dis-establish paternity findings for thousands of children, affecting their inheritance rights as well as the right to social security benefits. Millions of dollars in child support or Social Security benefits paid to custodial parents trying to raise their children would have to be repaid. Parties who had already paid court fees and fees to legal counsel would have to be told that they have no valid court order. Other states who have registered their courts' orders here in the Domestic Relations Court for enforcement for the UIFSA matters in which the parties were never married would have to be notified. Conversely, there are states who have registered orders for enforcement, involving parties who were not married, from the Domestic Relations Court. All these would have to be notified. Moreover, the cases in which the statute of limitations has not expired would have to be re-filed in the Cuyahoga County Juvenile Court, creating a huge backlog and overwhelming an already overburdened court.

A stay is sought in this matter because the CSEA's compliance with the *Pula* decision involves the stopping of enforcement. Enforcement is accomplished via a variety of methods, including wage attachments, bank account freezes, passport denials, license suspensions, and credit reporting. To not stay the Eight District's decision would produce a multi-faceted problem, but to name two: 1) child support payments based on these orders would have to be stopped, and there would be no remedy for the custodial parents with minor children until the parents were able to get their case before another court, creating an undue burden. The public's confidence in Ohio's courts and in Ohio's system of justice would be harmed irrevocably; and 2) compliance with the *Pula* decision creates a daunting task for the CSEA, and should this Court reverse the *Pula* decision, the time would have not been well spent.

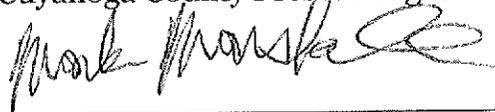
IV. CONCLUSION

A stay is necessary to maintain the status quo until this Court decides whether to accept jurisdiction. It is significant to point out that Ms. Pula-Branch, the non-custodial parent under order to pay child support, will not suffer any prejudice as she will be entitled to receive credit for support payments she makes while the stay is in effect.

For the foregoing reasons, the CSEA respectfully requests that this honorable Court grant a stay of the Eight District's judgment in this case.

Respectfully submitted,

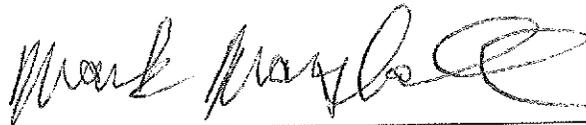
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CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Stay was sent by regular U.S. mail this 3rd day of June, 2010 to: Adrienne H. Pula-Branch, 3010 West 115th Street, Apt. 1, Cleveland, Ohio 44111.



Mark R. Marshall #0056126,
Assistant Prosecuting Attorney

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93460

RUBY K. PULA, ET AL.

PLAINTIFFS-APPELLANTS

vs.

ADRIENNE HAUNANI PULA-BRANCH

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-323885

BEFORE: McMonagle, P.J., Stewart, J., and Cooney, J.

RELEASED: March 11, 2010

JOURNALIZED: APR 21 2010

VOL 0702 P00924



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FILED AND JOURNALIZED
PER APP.R. 22(C)

APR 21 2010

GERALD E. FUERNST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.



ANNOUNCEMENT OF DECISION
PER APP.R. 22(B) AND 26(A)
RECEIVED

APR 11 2010

GERALD E. FUERNST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief, per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

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COPIES MAILED TO COUNSEL FOR
ALL PARTIES - COSTS TAILED

CHRISTINE T. McMONAGLE, P.J.:

This case originated as an interstate petition for child support filed by the state of Hawaii under the Uniform Interstate Family Support Act, codified in Ohio at R.C. 3115.01 et seq. The petition was brought on behalf of Ruby K. Pula, maternal grandmother of minor child K.G.P., and sought an order of support from Adrienne Haunani Pula-Branch, the child's mother. K.G.P. was born in Hawaii and lives there with Pula; his mother lives in Cleveland. K.G.P.'s parents never married.

Counsel for Cuyahoga Support Enforcement Agency ("CSEA") filed the petition in the domestic relations division of the Cuyahoga County Common Pleas Court. Pula-Branch did not appear at the subsequent hearing before the magistrate, although she was properly served. At the hearing, CSEA provided information about both the purported father, George E. Gates, and Pula-Branch's incomes for purposes of determining the mother's support obligation.

The magistrate subsequently issued a decision ordering Pula-Branch to pay \$61 per month in child support (\$51 current child support plus \$10 arrearage support). The magistrate's decision found that the birth certificate submitted with the petition identified her as the child's mother. (Although not noted by the magistrate, the birth certificate also identified Gates as the child's father.) The magistrate further found that according to the petition, paternity

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had been established.¹ Nevertheless, the magistrate concluded that no evidence verifying the establishment of paternity had been submitted to the court. The magistrate concluded that without evidence verifying paternity, it would be inequitable to include the father's income in any child support calculation.

The trial court subsequently overruled CSEA's objections to the magistrate's decision and adopted the decision in its entirety. CSEA appealed from the trial court's decision.

This court sua sponte ordered CSEA to brief the issue of whether the domestic relations court had subject-matter jurisdiction of this matter, because the parents never married, and the person seeking support was not the parent of the child. Because the domestic relations court lacked jurisdiction, we reverse with instructions to the domestic relations court to vacate its order.

I.

"Jurisdiction' means 'the court's statutory or constitutional power to adjudicate the case.' The term encompasses jurisdiction over the subject matter and over the person. Because subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case, it can never be waived and may be challenged at any time. It is a 'condition precedent to the court's ability to hear

¹Section VIII of the Child Support Enforcement Transmittal form from the Maui branch of Hawaii's Child Support Enforcement Agency indicated that a birth certificate establishing paternity was attached to the petition.

the case. If a court acts without jurisdiction, then any proclamation by that court is void.” *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶11 (internal citations omitted).

II.

Under R.C. 3115.16(B)(1) of the Uniform Interstate Family Support Act, when a “responding tribunal” in Ohio receives a complaint or comparable pleading from an initiating state (in this case Hawaii), it may “to the extent otherwise authorized by law * * * issue or enforce a support order.”

CSEA contends that the domestic relations court was the proper “responding tribunal” in this case because R.C. 3115.01(R) defines “responding tribunal” as “the authorized tribunal in a responding state” and R.C. 3115.01(X) defines “tribunal” as “any trial court of record in this state * * *.” In light of these definitions, CSEA contends that it may bring an action under the Uniform Interstate Family Support Act in any Ohio court, and therefore the domestic relations court had proper jurisdiction of this matter. We disagree, because the statute provides that the responding tribunal must be an “authorized” tribunal and may act only “to the extent otherwise authorized by law.” Although in some counties, a domestic relations court may be an appropriate “responding tribunal” under the Uniform Interstate Family Support Act and authorized to hear cases such as this one, where the parents never married, the domestic relations court

of Cuyahoga County is not authorized to hear and decide cases that do not involve issues relating to a divorce, dissolution, legal separation, or annulment of a marriage.

The Ohio Constitution vests the judicial power of the state in "courts of common pleas and divisions thereof * * * as established by law." Section 1, Article IV, Ohio Constitution. The Ohio General Assembly defines the jurisdiction of the courts of common pleas and their respective divisions. Sections 4(A) and (B), Article IV, Ohio Constitution; *Walters v. Johnson*, 5th Dist. No. 01CA107, 2002-Ohio-2680, citing *Seventh Urban, Inc. v. Univ. Property Dev., Inc.* (1981), 67 Ohio St.2d 19, 423 N.E.2d 1070.

R.C. 3105.011 sets forth the jurisdiction of the domestic relations divisions of the common pleas courts as follows: "The court of common pleas[,] including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters." "This section limits the jurisdiction of the domestic relations division to the determination of domestic relations matters." *Lisboa v. Karner*, 167 Ohio App.3d 359, 2006-Ohio-3024, 855 N.E.2d 136, ¶6.

Although R.C. 3105.011 does not define "domestic relations matters," the Ohio General Assembly set forth the jurisdiction of the domestic relations divisions of the various common pleas courts in Ohio in R.C. 2301.03. As

recognized by the Fifth District, "the Ohio General Assembly was not consistent in its enabling language [of R.C. 2301.03] and tailored the jurisdictions of the domestic relations and juvenile courts to the needs and/or desires of the specific county." *Walters*, supra. Thus, the jurisdiction of Ohio's domestic relations courts may vary from county to county.

With respect to Cuyahoga County, R.C. 2301.03(L)(1) provides that domestic relations court judges in Cuyahoga County "have all the powers relating to all divorce, dissolution of marriage, legal separation, and annulment cases * * *." Thus, with respect to the domestic relations court of Cuyahoga County, "domestic relations matters" within the purview of R.C. 3105.011 is limited to those matters set forth in R.C. 2301.03(L)(1).

The Franklin County Court of Appeals reached a similar conclusion in *Levy v. Levy* (May 2, 1978), 10th Dist. No. 77AP-918. In that case, Doreen Levy cohabitated with, but was not married to, Simon Levy. She sought an equitable division of property between them, which included considering the substantial money and services she had provided to Simon and his company. She brought her claim in domestic relations court, and the trial court dismissed for lack of jurisdiction. The appeals court affirmed. It noted that R.C. 3105.011 confers jurisdiction over "domestic relations matters" in the domestic relations divisions of the common pleas courts. It further found that R.C. 2301.03(A) defines the

jurisdiction of the domestic relations division of the Franklin County Common Pleas Court as including: "all powers relating to juvenile courts * * * all paternity proceedings * * * and all divorce, alimony, and annulment cases." It concluded that with respect to the domestic relations court in Franklin County, "domestic relations matters' within the purview of R.C. 3105.011 [are] limited to those matters set forth in R.C. 2301.03(A)." Thus it concluded that because Doreen's claim did not involve a "domestic relations matter," it could not be brought in the domestic relations court.²

Likewise here, as the interstate petition for child support was not related to a divorce, dissolution of marriage, legal separation, or annulment, the only matters per R.C. 2301.01(L)(1) over which the Cuyahoga County domestic relations judges have jurisdiction, the case did not constitute a "domestic relations matter" within the contemplation of R.C. 3105.011. Accordingly, the domestic relations court did not have jurisdiction over the case³ and, hence, its

²Conversely, in *Walters*, supra, the Fifth Appellate District held that the domestic relations court of Licking County *did* have jurisdiction to hear a custody matter involving a child of unmarried parents because the enabling legislation of R.C. 2301.03(S), setting forth the jurisdiction of the Licking County Domestic Relations Court, provided that the court had jurisdiction to determine "the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation."

³"[T]he domestic relations court has no jurisdiction with reference to an award of child support which is not given to it by statute * * *." *Bantz v. Bantz* (Feb. 10, 1993), 2nd Dist. No. 92-CA-0073.

support order was void ab initio. We therefore reverse and remand with instructions to the domestic relations court to vacate its order.⁴

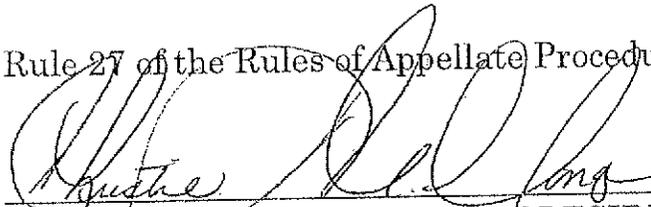
Reversed.

Costs waived.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


CHRISTINE T. McMONAGLE, PRESIDING JUDGE

MELODY J. STEWART, J., and
COLLEEN CONWAY COONEY, J., CONCUR

⁴Under R.C. 2151.23(B)(3), which provides that the juvenile court has original jurisdiction under the Uniform Interstate Family Support Act, this case would be properly brought in juvenile court.

The State of Ohio, } ss.
Cuyahoga County.

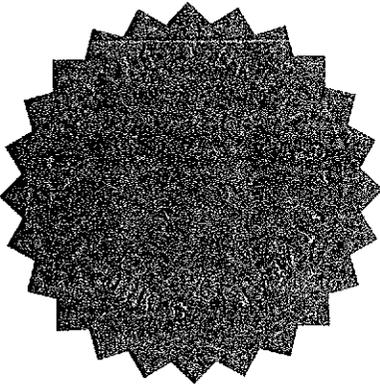
I, GERALD E. FUERST, Clerk of the Court of

Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be, kept, hereby certify that the foregoing is taken and copied

from the Journal Entry, Volume 702 Page 924 Dated: 4-21-10 CA 93460

of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal Entry Vol. 702 Page 924

Dated: April 21, 2010 and that the same is correct transcript thereof.



In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 2nd

day of June A.D. 20 10

GERALD E. FUERST, Clerk of Courts

By [Signature] Deputy Clerk