

▶ FAMILY LAW

It's Past Time for Kansas to Adopt the 2001 Amendments to the Uniform Interstate Family Support Act (UIFSA)

By Douglas C. Cranmer and Jeffrey N. Lowe



Douglas Cranmer is a member of *Stinson, Lasswell & Wilson, L.C.*, in Wichita, Kan. A native of Wichita and a life-long resident of Kansas, Mr. Cranmer graduated cum

laude with a B.B.A. from Wichita State University in 1983, and graduated with honors with a J.D. degree from Washburn University School of Law in 1987. Mr. Cranmer is a highly rated attorney, as evidenced by his "B-V" rating in the Martindale-Hubbell Law Directory. Mr. Cranmer focuses in the areas of family law, business law, estate planning and civil litigation.



Jeffrey Lowe is an attorney with the law firm of *Stinson, Lasswell & Wilson, L.C.* Mr. Lowe is a native of Winfield, Kan., and a life-long resident of Kansas. He

received his J.D. degree from Washburn University School of Law and graduated summa cum laude with a B.B.A. from Southwestern College. He is a member of the American, Kansas and Wichita bar associations and of the Kansas Association for Justice, and is licensed to practice law in the Kansas District Courts and the U.S. District Court for the District of Kansas. Mr. Lowe focuses in the areas of family law, business law, estate planning and civil litigation.

The family law practitioner in Kansas is probably familiar with the Uniform Interstate Family Support Act (UIFSA), which is set forth at K.S.A. 23-9,101 *et seq.* Unfortunately, the Kansas version of the UIFSA was adopted by our Legislature in 1994 and was last amended in 1997. Thus, the Kansas Legislature effectively adopted the 1996 version of UIFSA. Since that time, the National Conference of Commissioners on Uniform State Laws has made several modifications to UIFSA over the years. Kansas, however, (along with many other states) still continues to operate under the 1996 version of UIFSA.

UIFSA was adopted with the basic principal that a child support order from one state should be readily enforceable in other states. It was specifically designed to correct the problem of multiple support orders, which were permitted to be issued in different states under the Uniform Reciprocal Enforcement of Support Act (URES). Kansas repealed URESA, K.S.A. 23-451 *et seq.*, in 1994.

Since 1996, the National Conference of Commissioners on Uniform State Laws has recommended several amendments to UIFSA, which promote a one child support order system.

Perhaps the most important proposed amendment to the current version of UIFSA in use in Kansas is the specific inclusion of a comity provision that may be utilized by a state to enforce a foreign nation-state's child support order without a separate reciprocity agreement, as well as clarification of the use

of reciprocity when dealing with foreign orders.

In a case presently pending before the Kansas Court of Appeals, *Edith Dia v. Marvin Oakley, Jr.*, the appellant, Marvin Oakley, Jr., contends the state of Kansas is without subject matter jurisdiction to register and/or enforce a German child support order under the existing version of UIFSA in Kansas. In this case, Mr. Oakley, Jr. was a member of the U.S. military and was stationed in Germany. Mr. Oakley, Jr. left Germany in the latter part of 1991 or early 1992, and was honorably discharged from the military in 1994. Since 1994, Mr. Oakley, Jr. has only resided in Kansas.

In February 2005, and under the color of UIFSA, specifically K.S.A. 23-9,101 *et seq.*, Mr. Oakley, Jr. was served by the Sedgwick County (Kansas) Office of the Court Trustee with a "Notice of Registration of Order," along with numerous accompanying foreign documents, with regard to the registration and enforcement of an international child support order from Germany.

Upon review of these documents, Mr. Oakley, Jr. discovered for the first time that, by way of a paternity action or actions that had apparently commenced in Germany in 1999, he had been named the legal father of a minor child whom he had never met nor whom he knew existed. Furthermore, there has never been any genetic testing confirming Mr. Oakley, Jr. as the father of the minor child.

Mr. Oakley, Jr. does not know or cannot remember the mother of this child.

Also of importance, Mr. Oakley, Jr. indicates he has never been served with process of the underlying German proceedings, nor had he been provided with any notice, whatsoever, of the underlying German proceedings until February 2005, as alluded to above. Indeed, the claim is that service of the underlying German action(s) was made upon Mr. Oakley, Jr. in August 2000, by service on his father's girlfriend at a residence in Maryland where Mr. Oakley, Jr. had not resided for nearly 10 years. In addition, this purported service upon Mr. Oakley, Jr. in August 2000 was *after* judgment had already been entered against Mr. Oakley, Jr. in Germany in 1999.

The issue of personal jurisdiction over Mr. Oakley, Jr., although intimately related to the appeal and whether Kansas can enforce the aforementioned German child support order against Mr. Oakley, Jr., is a separate issue that will not be discussed in this article in great detail.

In August 2005, an "Order Confirming Registered Order" was entered against Mr. Oakley, Jr. by default in the Sedgwick County District Court. Mr. Oakley, Jr.'s wages were withheld several months later. Soon thereafter, a "Motion to Stay Enforcement Proceedings; Motion to Set Aside Order Confirming Registered Order and Certificate and Order; and Motion to Dismiss" were filed on behalf of Mr. Oakley, Jr. raising several issues, including:

1. Is Germany classified as a "State" under K.S.A. 23-9,101(s)(2)?
2. If not, and if Kansas does not have subject matter jurisdiction under the "Kansas" version of UIFSA to register and enforce a German child support order, is the "Order Confirming Registered Order" in Mr. Oakley, Jr.'s case void by operation of law?

The United States has not signed any international agreement on child support enforcement with Germany. Likewise, Kansas has not signed any agreements for the establishment and enforcement of child support obligations with any foreign countries, includ-

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ing Germany. Such analysis is critical for enforcement of foreign child support orders under the Kansas version of UIFSA, but not necessarily the amended version of UIFSA.

Kansas' existing version of UIFSA, specifically K.S.A. 23-9,101(s)(2), provides in pertinent part that the term "State" includes "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 act." Again, neither the United States nor Kansas has such a law or procedure in place with Germany.

Moreover, child support orders and, more importantly, the process utilized to obtain jurisdiction and the notice requirements to secure such orders from Germany are substantially different in process and procedure than a support order issued from and by a Kansas court. Therefore, in Mr. Oakley, Jr.'s case, the aforementioned "Order Confirming Registered Order" is automatically void for lack of subject matter jurisdiction because it was registered and enforced under the Kansas version of UIFSA and not under principals of equity or at common law.

The Kansas version of UIFSA addresses the ability of courts of this state to modify and/or enforce existing domestic support orders. If, however, the tribunal issuing the domestic support order fails to qualify as a "State" under the definition set forth in UIFSA, Kansas will not be vested with proper subject matter jurisdiction to register or enforce the issuing tribunal's domestic support order under UIFSA. Should a receiving tribunal in the state of Kansas confer subject matter jurisdiction upon itself, as the district court did in Mr.

Oakley Jr.'s case, any registration and/or enforcement of the issuing tribunal's order will be void, considering such enforcement constitutes a Constitutional violation and a violation of Kansas statutory law and case law. This basic principal was articulated by the Kansas Court of Appeals in *In re Marriage of Beeson and Van der Weg*, 119 P.3d 1187, 2005 WL 2347788 (Kan.App., 2005).

UIFSA 2001 or later version may be one solution to this confusion and ambiguity, as it includes the use of comity to register and enforce foreign support orders, something the Kansas version of UIFSA does not provide for.

Generally speaking, "comity" is the common-law principle where the courts of one jurisdiction or state give effect to the decisions of courts of other jurisdictions or states out of deference and respect. Comity was first introduced into UIFSA in the 2001 version.

Arguably, common-law principals of comity could be used as an alternative to UIFSA, specifically K.S.A. 23-9, 101 *et seq.*, for child support enforcement in Kansas. However, comity and the existing version of UIFSA cannot both be used to enforce child support orders—as I believe was wrongly done in Mr. Oakley, Jr.'s case. There are significant differences between the common-law doctrine of comity and the statutory principals of comity specifically recognized under the 2001 revisions of UIFSA.

UIFSA 2001, and subsequent versions or revisions, clarify the use of comity in child support enforcement. In an attempt to avoid ambiguity and clarify enforceability of foreign child support orders, post-2001 versions of UIFSA include specific language regarding enforcement under principals of comity.

Kansas' existing version of UIFSA only allows a district court, after finding that there is no remedy at law, to use other equitable principles. *See* K.S.A. 23-9,103. This, of course, means that the "old" UIFSA and its provisions and procedures are no longer applicable if a court has found there is not a child support order from what has been properly defined as a "State." Essentially, if and when the "old" UIFSA fails, foreign child support orders can then, and only then, be enforced at common law, which seems to conflict with the aforementioned principal of UIFSA to readily and efficiently enforce foreign support orders between states.

K.S.A. 23-9, 101 *et seq.*, currently does not specify that principals of comity can be used to register and enforce a foreign child support order. No such analysis was used or followed in Mr. Oakley, Jr.'s case. In Mr. Oakley, Jr.'s case, because the district court apparently relied on common-law equitable principals to enforce a German child support order, despite the fact there is no federal or state reciprocity with Germany, Mr. Oakley, Jr. should have been allowed to argue (and successfully, I might add) all equitable defenses available to him including, but not limited to, lack of personal jurisdiction and insufficiency of service of process. Given the unfamiliarity and ambiguity of K.S.A. 23-9, 101 *et seq.*, the district court wrongfully registered and enforced a German child support order under UIFSA and not at mere common law.

In today's mobile society there will be future cases similar to that of Mr. Oakley, Jr.'s, wherein a district court will blindly rely upon UIFSA to enforce a foreign child support order from a country where there is no reciprocity with the United States or Kansas. Accordingly, any such failings in registra-

tion, evidentiary procedures and other important definitional provisions (such as the definition of a "State") found in the "old" UIFSA would not be applicable in a case, such as Mr. Oakley Jr.'s, where a court is wrongfully trying to use its general powers and equity.

The statutory principals of comity specifically recognized under the 2001 and/or revisions of UIFSA would make it more efficient for a state when attempting to register a foreign child support order. The 2001 revision of UIFSA specifically recognizes principals of comity (i.e. statutorily speaking if adopted by a particular state). However, reciprocity remains an issue with regard to the recognition and enforcement of support orders issued by foreign nation-states under any pre-2001 version of UIFSA, K.S.A. 23-9,101 *et seq.* The drafters of the 2001 amendments to UIFSA explicitly recognized this problem and extended principles of comity to foreign support orders. However, as previously alluded to, many states, including Kansas, have yet to adopt the 2001 revision of UIFSA. Therefore, the issue of statutory reciprocity and common-law principals of comity as between states within the Union and foreign nation-states prove to be a source of confusion to many courts not yet guided by the 2001 revision of UIFSA.

States that have yet to adopt the 2001 revision of UIFSA, and thus presumably operating under the 1996 version of UIFSA, require that a foreign nation-state be recognized as a "State" within the meaning of UIFSA or federal legislation in order to enforce a foreign support order under that particular law. *See generally*, K.S.A. 23-9,101(s)(2). This means that the foreign nation-state must have substantially similar laws and procedures as that of the receiving state in order for the receiving state to recognize

and enforce the foreign nation-state's order under the "old" UIFSA. If the receiving state has not recognized the foreign nation-state as having substantially similar laws and procedures as that of the receiving state, the receiving state may not enforce the foreign order under "old" UIFSA because the definition of "State" has not been met by the issuing foreign jurisdiction. *See generally*, K.S.A. 23-9,101(s)(2).

However, the receiving state may arguably enforce the foreign jurisdiction's order under common-law principles of comity. If the receiving state elects to enforce under common-law principles of comity, it does so subject to all equitable defenses that may be raised by a defendant/respondent. In Mr. Oakley, Jr.'s case, because Kansas has not enacted the 2001 amendments to UIFSA, I am of the opinion a Kansas court must either recognize Germany as a "State" in order to enforce the German support order or it must apply common-law principles of comity. It cannot, however, do both. In the very near future, the Kansas Court of Appeals will be forced to interpret this. ▲

The following scholarly works were relied upon in writing this article:

Laura W. Morgan, *Family Law Update: The 2001 Amendments to UIFSA*, FAMLU § 6.02 (2008).
Major John S. Frost, *New Developments in Child Support: Enforcement of Foreign Orders Under the 2001 Amendments to the Uniform Interstate Family Support Act*, 2008-Dec Army Law 15 (2008).

Traer Cundiff, *Making Sense of the Changes: The 2001 Amendments to UIFSA*, 20 J. Am Acad. Matrim. Law. 323 (2007).