

Survey of Family Law Cases 2004-2013

2008 Family Law Survey

ENFORCEMENT OF CHILD SUPPORT ORDERS

Plaintiff, a resident of Colorado, appeals from an order dismissing her action to terminate a wage assignment for lack of jurisdiction over Californian Defendants in Vogan v. County of San Diego & County of San Diego Dep't of Child Support Services, 193 P.3d 336 (Colo. App. 2008). In 1998, Defendants obtained a California order for child support and a wage assignment. Under the Uniform Interstate Family Support Act (UIFSA), Defendants forwarded the wage assignment to Plaintiff's Colorado employer, who began withholding child support from her income. In 2002, Plaintiff registered the California order in Colorado. In 2003, Plaintiff filed a petition to vacate the California judgment for lack of jurisdiction due to lack of service on Plaintiff. Since Defendants never responded, the court granted the petition. In 2005, Plaintiff filed an action against Defendants, alleging that they wrongfully refused to terminate the wage assignment; she sought reimbursement for all money withheld from her income since Colorado vacated the California child support order, and treble damages under the civil theft statute, C.R.S. §18-4-405. Defendants filed a special appearance and motion to dismiss Plaintiff's action for lack of personal jurisdiction. Plaintiff responded, alleging that Colorado had jurisdiction over the Defendants under the long-arm statute. Defendants' motion to dismiss was granted.

Defendants argued that Colorado does not have personal jurisdiction, because pursuant to C.R.S. §14-5-314(a), participation by a petitioner in a UIFSA proceeding does not confer personal jurisdiction over petitioner in another proceeding. The Court of Appeals found that Colorado does have jurisdiction over the Californian Defendants because C.R.S. §14-5-607(b) provides that a Colorado court may stay enforcement of a registered order and "may issue other appropriate orders." Since Defendants availed themselves of UIFSA by using a California child support order to reach earnings in Colorado, Colorado has continuing subject matter and personal jurisdiction over Defendants to enforce its prior Order.

With regard to the civil theft claim, Colorado does have personal jurisdiction over the Defendants because Colorado's long-arm statute provides jurisdiction over "any cause of action arising from the transaction of any business within this state; or the commission of a tortious act within this state." C.R.S. §13-1-124(1)(a)&(b). Secondly, the court found that Plaintiff's unanswered complaint alleged that harmful effects of the tortious acts were felt in Colorado, thus there is a sufficient nexus between Defendants and Colorado to comport with and not offend due process. The case is remanded to proceed on Plaintiff's complaint since both parts of the long-arm jurisdiction analysis were met.