

DIVISION OF ST. THOMAS AND ST. JOHN

This matter is before the Court on a motion of Respondent for reconsideration of Paragraph 3 of our Order of October 23, 1985, which on grounds of waiver and equitable estoppel modified the amount payable by Respondent by Order of Court for the support of his children. The motion also seeks reconsideration of Paragraph 4 of our aforementioned Order which provides that an evidentiary hearing shall be held within fifteen (15) days from October 23, 1985, which could lead to further modification of the support order. To quote Respondent, "[He] contends that this Court is without subject matter jurisdiction to entertain any request for modification of Respondent's existing child support obligation, and that this

Court's discretion under Uresa is limited to the enforcement of such previously existing obligation. This means that this Court is without authority to either increase or decrease Respondent's child support payments". For the reasons appearing hereafter, the motion will be denied in all respects.

The issue presented by Respondent's Motion and Memorandum of Law in support thereof requires the making of a significant legal distinction between two questions, factors, that are always involved and must be carefully considered in every Uresa case heard in a Virgin Islands Court as the Court of the responding state pursuant to currently existing Virgin Islands law. These two discrete, unrelated, questions were clearly defined and articulated by Judge Maris in Lorillard v. Lorillard, 5 V.I. 483, (3rd Cir. 1966), which, ironically, together with other authorities, to which we shall come later, was cited by Movant, in support of his position. Pertinent to this discussion, the Lorillard Court stated:

The framers of the Uniform Act doubtless took into account the fact that a court decree which is entered in a divorce or other proceeding involving the question of support is ordinarily final and definitive with respect to the duty of support which it imposes for the period of time during which the law requires such support to be given. But the amount of support to be given in discharge of that duty is another matter. The amount of support to be given in the future by the person obligated to give it, as distinguished from the duty to give it,

is almost universally subject to modification from time to time by the court in the light of changing circumstances of the parties. Accordingly, it is only the duty of support determined by the foreign judgment, and not the amount of support thereby decreed, which is binding on the court of the responding State, in our case the Municipal Court^{1/} of the Virgin Islands, under the Uniform Act. Having found that duty to exist, either under the local law or by virtue of a valid foreign judgment, the Municipal Court is given discretionary power by Section 20 of the Uniform Act, 16 V.I.C., Section 423, to determine the amount of support to be awarded upon consideration of the resources of the person obligated to give it and the necessities of the party who is to receive it. 16 V.I.C., Section 345; Moore v. Moore, 1961, 252 Iowa 404, 107 N.W.2d 97. Compare Allain v. Allain, 1960, 24 Ill. App.2d 400, 164 N.E.2d 611. Thus upon remand of this case to the Municipal Court that court will not be bound by the figures stipulated in the separation agreement, as it might be in a direct suit on the Arkansas judgment, but will take the agreed figures into consideration along with the present resources of the defendant and necessities of the plaintiff in determining in its discretion the appropriate amount of support which the defendant should presently furnish to the plaintiff. [underscoring ours] Pages 491-492 id.

¹The Territorial Court is now the successor to the Municipal Court.

It is precisely the distinction between these two questions made in Lorillard that we made in our disposition of the case thus far and, more particularly, used as the basis for Paragraphs 3 and 4 of our Order of October 23, 1985. The two questions to be distinguished are (1) the duty to support, and (2) the amount of that support. Lorillard teaches that if the initiating state has not found a duty of support to exist, then, in that case, the responding state is without jurisdiction to entertain the matter. But once the initiating state has found a duty of support, the respondent state has jurisdiction and may exercise its discretion as to the amount of support payable. Whether we give relief on grounds of waiver and equitable estoppel, or modify the amount of support payable in the future for tuition and medical expenses, or because of our consideration of the present number and needs of the children to be supported, or other post-judgment compelling circumstances, generically, we are dealing with the same subject, the amount of support which the obligor should pay to discharge his duty of support to the obligee(s) entitled thereto. And this we are authorized and directed to do by Lorillard.

On a prior motion for reconsideration made by Petitioner, we entered a vacatur of Paragraph 3, not because we took the position that we lacked jurisdiction to modify the amount of support payable prospectively, but because we agreed with Petitioner that the relief granted the Respondent on grounds of waiver and equitable estoppel were accorded him

without giving Respondent due process, a fair opportunity to be heard on that question. But on the teaching of the Lorillard Court, we maintain that we have jurisdiction to modify prospectively, not to go behind and change antecedently, the foreign judgment in Uresa cases.

We turn now briefly to the other authorities, besides Lorillard, Movant has cited to support his contentions.

First, he cites People of the State of Illinois ex rel. Diana Noah, Appellant, 91 Ill. App. 3rd 980, 47 Ill. Dec. 447. But that case holds, as does the Lorillard Court, that the divorce court's order providing that the father's "obligation to pay child support payments...shall cease and terminate, effective immediately until further order barred mother's subsequent petition under Uresa". As Judge Maris held in Lorillard, since there was no duty of support established and extant in the initiating state, the respondent state lacked jurisdiction to consider the case. Thus, the matter was coram non judice, and the petition was properly dismissed.

Next, Movant cites O'Halloran v. O'Halloran, 580 S.W. 2d 870 (1979). In this case the court held that under the Texas version of Uresa in effect at the time, there existed two procedures (methods) that were permitted to obtain relief in Uresa proceedings. We quote from that opinion:

Two subchapters of the Texas version of URESA provide for the interstate civil enforcement of support obligations. The first is known as the "Initiating State--Responding State" civil enforcement procedure which is provided by

Secs. 21.21-21.45. That procedure permits a resident of a foreign state to use a court of that state to certify to a Texas court facts showing that a resident of Texas, or one who owns property in Texas, owes an obligation of support to the initiating party. The Texas court then, either with or without conducting a hearing (depending upon whether defenses are raised), determines the duty and the amount of support that is owed, and enforces that obligation either by action against the obligor personally or against his property or both. There is a division of opinion as to whether this procedure allows the responding court to modify an existing support decree of the initiating state. See Fox, supra, p. 130. The majority view is that modification, at least as to future obligations, is permitted if found by the responding state to be justified. See Koehler v. Koehler, 559 S.W. 2d 944 (Tenn. 1977); Commonwealth v. Byrne, 212 Pa.Super. 566, 243 A.2d 196 (1968); Davidson v. Davidson, 66 Wash.2d 780, 405 P. 2d 261 (1965); Moore v. Moore, 252 Iowa 404, 197 N.W.2d 97 (1961); Fox, supra; Annot. 42 A.L.R. 2d 768 (later case service). The minority view is represented by cases such as Craft v. Hertz, 182 N.W.2d 293 (N.D.1970). See also Hamilton v. Hamilton, 476 S.W.2d 197 (Ky.1972). The question has not been definitely settled in Texas. Compare, however, Holmes v. Tibbs, 542 S.W.2d 487 Tex.Civ.App.Corporal Christi 1976, no writ.

The second method of civil enforcement under Uresa Texas law at the time was the registration method. After

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quoting verbatim this portion of the statute, the Court said this method is simply a proceeding identical to a suit on a foreign judgment in which the only defenses permissible are those which relate to the validity of the original judgment such as lack of jurisdiction or the existence of procedural defects which render the judgment void. To quote the Court as to the definition of this second (the registration) method, and how it works:

As indicated by the statutes, the registration procedure is applicable in those instances where the obligee has previously obtained a support decree in a sister state. In reality, it is simply a proceeding for the enforcement of a foreign judgment, similar to a proceeding under the full faith and credit clause of the United States Constitution. Statute Note, 44 Tex.L.Rev. 814 (1966). As in a full faith and credit inquiry, the only defenses which may be interposed are those which relate to the validity of the original decree, such as a lack of jurisdiction or the existence of procedural defects which render the judgment void. Defenses based upon a claim that the judgment was erroneous or that, according to the law of the forum, the judgment would not have been rendered in the first instance, are not permitted. Statute Note, 44 Tex. L.Rev. 814 (1966). Thus, if one of the limited defenses allowed by Sec. 21.65 is not successfully interposed, the Texas court has only one course to take. It must confirm the decree, determine the amounts thereunder which are unpaid, and employ such enforcement

procedures under Sec. 21.66
as may be deemed proper.

The wording of our Uresa statute, 16 V.I.C., Section 391 et seq., our long-standing practice under the statute from the time of its enactment in 1952, and its interpretation and application by the Lorillard Court indicate beyond question that it is the first method under the Texas Uresa law that we follow, and are legally required to follow, in this jurisdiction. Even in Texas, under the first method, the court of the responding state may, according to the majority view, modify the amount of the payments to be made by the obligor, once the jurisdictional foundation of the duty of support has been established. Since the petition in O'Halloran was seen by that court as falling within the purview of the second, the registration, method under the Texas Uresa statute, the court decided it had no authority to change the amount of support originally ordered to fulfill and discharge the duty of respondent to support. Clearly, distinguishable from the case before us under the state of our Uresa law today as construed in Lorillard.

Next he cites Littrell v. Littrell, Tex.Civ. App. 601 S.W.2d 207, decided in 1980, just one year after O'Halloran, supra, which followed the reasoning of O'Halloran, that the registration of a foreign judgment method, in effect a suit on a foreign judgment, involving giving full faith and credit under the U.S. Constitution to the valid judgment of another U.S. jurisdiction, was involved, and therefore no change in the amount payable would be legally appropriate, if the judg-

ment was not proved void.

In Ray v. Ray, Ga., 277 S.E. 2d, 495, the court interpreted a provision in the Georgia Uresa statute which reads in haec verba with Section 428 of Title 16 of our Uresa statute, on which Movant also relies, to wit:

Section 428. APPLICATION OF
PAYMENTS

Any order of support issued by a court of this territory when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

Read in pari materia with Judge Maris' construction of this section, all it says is that no order of support made by a Virgin Islands Court may go behind or change an order of support made in a foreign judgment in Uresa cases, for that would undermine the entire judicial process, the integrity and legal effect of judgments, as of the time they were rendered. But this section does not, cannot reasonably, mean that the judgment, susceptible as it clearly is by its very nature to future economic and social consequences which cannot be foreseen when it is rendered, may not be changed upon proof of the coming into existence of circumstances which make such change judicially appropriate and justified.

And even as to the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), since Lorillard was decided long after that revision occurred, it must be conclusively presumed that the Lorillard Court was cognizant of its existence and acted with it in mind. Moreover, the Lorillard Court did exactly what Ruresa allows with respect to the power of the responding state to modify the amount of support payable under the order of the court of the initiating state, once the duty of support has been established by the latter, based on proof of relevant post-judgment developments.

While we took the time to analyze these authorities cited to us by Movant, it should be quite manifest that these authorities, to the extent that they differ from the Uresa statute of the Virgin Islands, 16 V.I.C., Sections 391, et seq., as construed in the Lorillard case, are not the law of the Virgin Islands, are not even persuasive authority, are at best instructive, if that. Since the Uresa law of the Virgin Islands has not been amended since Lorillard, and Lorillard has not been overruled in whole or in pertinent part, the statute so construed constitutes the Uresa law of the Virgin Islands, which we must follow.

To summarize and to attempt to make abundantly clear the position we take in this opinion, what the method of enforcing a Uresa judgment adopted in Lorillard does not say is that the foreign judgment can be changed, that the Uresa court may go behind a perfectly valid judgment and alter it in matters that could properly be changed only by timely

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appeal from that judgment. But what Lorillard does say is once the distinction is made between the duty to support and the amount of support to be paid, and the duty to support found by the initiating state, the Uresa court should enforce that valid judgment of the foreign state, modified only by changed circumstances which transpired after, not up to or contemporaneous with, the time of the judgment, e.g., behavior of the parties that warrant equitable relief because of waiver or estoppel in pais, changed economic circumstances of the parties, etc. To say that the foreign judgment being enforced in a Uresa case is so cast in concrete that no matter what events occur after the judgment, in the vicissitudes of life which the court rendering the judgment must have considered to be an inherent, built-in factor of any such judgment, that it could never be changed no matter what these post-judgment developments which could not have been foreseen at the time it was rendered, would be wholly unreasonable and legally unacceptable.

ORDER

In view of the foregoing, we see no reason to modify our Order of December 3, 1985, because of either of the reasons advanced by Movant; and his motion for reconsideration is therefore denied in all respects.

CERTIFIED A TRUE COPY

Dated

December 11, 1985

Viola E. Smith
Clerk of the Court

BY

Service M. Berne
Asst. Deputy

Alphonso A. Christian

ALPHONSO A. CHRISTIAN,
JUDGE.