

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

**MICHELE LYNN BOWMAN, now known
as MICHELE LYNN HANSON,**

Petitioner,

vs.

ALLEN SCOTT BOWMAN,

Respondent.

Case No. 19060

**ORDER DENYING
CONFIRMATION OF
REGISTERED SUPPORT
ORDER**

DATE OF HEARING: September 17, 2001.

DATE OF RENDITION: December 19, 2001.

DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).

TYPE OF HEARING: Open court.

APPEARANCES:

For petitioner: No appearance.
For respondent: Forrest F. Peetz with respondent.
For State of Nebraska: Thomas P. Herzog, Holt County Attorney.

SUBJECT OF ORDER: Petition for registration of foreign support order for enforcement only.

PROCEEDINGS: See journal entry entered September 18, 2001.

FINDINGS: The court finds and concludes that:

1. This court entered a decree of dissolution of marriage of the parties on January 24, 1991. The decree granted custody of three children to the petitioner and ordered the respondent to pay child support.

2. By order entered on December 3, 1993, this court modified the decree to include a child born after the date of the original decree. That modification order also granted custody of the child to the petitioner and ordered the respondent to pay child support.

3. By order entered September 9, 1994, this court again modified the decree to grant custody of two children (Joel and Jordan) to petitioner and two children (Jessica and Justin) to respondent, and

modified child support accordingly. Under that order, the applicable amount of support at any particular time depended upon how many children remained in the respective custody of the particular parties.

4. The State of Nebraska, on behalf of the petitioner, now seeks to register an order entered by the Circuit Court of South Dakota, Sixth Judicial Circuit, filed on April 2, 2001. That order purports to modify this court's custody decree and support order. The South Dakota order grants custody of Justin and Jordan to petitioner, and orders respondent to pay child support of \$274.00 per month, commencing June 1, 2000, including a lump sum of \$2,466.00 for the retroactive support as arrears from June, 2000, through January, 2001. The petition for registration was filed with this court on May 17, 2001.

5. The evidence shows that trial was held before the South Dakota Circuit Court on November 30, 2000, and January 2, 2001. The circuit court made specific findings of fact and conclusions of law. Those findings of fact and conclusions of law were rendered on February 26, 2001, and filed on February 28, 2001. The order changing custody and ordering support in accordance with the findings and conclusions was thereafter filed on April 2, 2001.

6. Although not referred to in the petition for registration, the evidence also shows an order rendered and entered on May 8, 2001, stating that the current child support shall commence on August 1, 2000, apparently rather than June 1, 2000. That order does not address the amount of arrears determined in the April 2 order.

7. The respondent filed a responsive pleading through counsel alleging that (1) the South Dakota court lacked subject matter jurisdiction under the Uniform Child Custody Jurisdiction Act, (2) that the South Dakota court lacked personal jurisdiction over the respondent, (3) that there is an enforceable support order in existence in this case by this court, and, (4) the registering court failed to correspond with this court as required by § 42-1207.

8. The Nebraska Child Custody Jurisdiction Act (NCCJA) defines "custody decree" as "a custody determination contained in a judicial decree or order made in a custody proceeding and shall include an initial decree and a modification decree." NEB. REV. STAT. § 43-1202(4) (Reissue 1998). NCCJA specifically defines "custody determination" to mean "a court decision and court orders and instructions providing for the custody of a child, including visitation rights, *but shall not include a decision relating to child support* or any other monetary obligation of any person." NEB. REV.

STAT. § 43-1202(2) (Reissue 1998) (emphasis supplied). Thus, the NCCJA regulates jurisdictional issues regarding child custody, but does not control jurisdictional issues regarding conflicting child support orders.

9. This court looks instead to the Uniform Interstate Family Support Act (UIFSA) to determine the jurisdictional issues. NEB. REV. STAT. § 42-701 *et seq.* (Reissue 1998). Section 42-747 requires this court to recognize the South Dakota modification decree if the South Dakota court “assumed jurisdiction pursuant to the Uniform Interstate Family Support Act or a law substantially similar to the Uniform Interstate Family Support Act” NEB. REV. STAT. § 42-747 (Reissue 1998).

10. Section 42-709(a) confers continuing, exclusive jurisdiction over a child support order to this court: (1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order was issued, or, (2) until all of the parties who are individuals have filed written consents with this court for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction. NEB. REV. STAT. § 42-709(a) (Reissue 1998).

11. The evidence shows without any dispute that at all times, including during period of litigation in South Dakota, that the respondent has remained a resident of Nebraska. Subsection (1) of § 42-709(a) would retain continuing, exclusive jurisdiction with this court regarding *support orders*.

12. The evidence further shows without dispute that the petitioner and the respondent have not filed written consents with this court for the South Dakota court to modify the Nebraska child support order and assume continuing, exclusive jurisdiction. Thus, this court has not been divested of its continuing, exclusive jurisdiction over *support orders* by § 42-709(a)(2).

13. Because this court retained continuing, exclusive jurisdiction over the support order under UIFSA, the South Dakota court lacked jurisdiction to enter its child support modification order. Under § 42-711(b)(1), the prior order of this court controls and must be so recognized.

14. Accordingly, the petition for registration of the South Dakota order must be denied. However, there remains outstanding the issue of enforcement of the Nebraska order.

15. NCCJA authorizes the filing of a certified copy of a custody decree of another state in the office of the clerk of the district court, and states that the clerk “shall treat the decree in the same manner as a custody decree of the district court of this state.” NEB. REV. STAT. § 42-1215(1) (Reissue 1998).

That section further states that “[a] custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.” *Id.*

16. In *Hamilton v. Foster*, 260 Neb. 887, ___ N.W.2d ___ (2000), the Nebraska Supreme Court applied the NCCJA. The Supreme Court recognized that NCCJA establishes a strong preference for the state which originally determined custody to exercise its continuing jurisdiction if the jurisdictional prerequisites enumerated in that state’s version of the UCCJA are satisfied. *Id.* (citing *State ex rel. Grape v. Zach*, 247 Neb. 29, 524 N.W.2d 788 (1994)). It must first be determined whether the issuing state appears to have continuing, exclusive jurisdiction. *Hamilton v. Foster, supra*. Thus, the South Dakota court was required to examine the facts to determine if this court appeared to have continuing, exclusive jurisdiction regarding custody determination. Generally, when one court has entered a child custody decree and one of the parents remains a resident of that state, the courts of another state are without jurisdiction to modify custody unless the first court affirmatively declines jurisdiction. *Id.* Clearly, this court entered the initial custody decree and the respondent remained a resident of Nebraska.

17. However, the fact that a parent continues to reside in the issuing state is not alone sufficient to show that the issuing state retains continuing, exclusive jurisdiction concerning custody determination. *Id.* As the Supreme Court observed, the NCCJA is not meant to simply mediate jurisdictional disputes, but to direct litigation to the state best able to resolve it. *Id.* In order for the issuing state to retain continuing, exclusive jurisdiction over custody determination, not only must a parent or other contestant reside in that state but the child must continue to have a “significant connection” with that state. *Id.*

18. Paragraph 9 of the South Dakota Circuit Court’s findings of facts convincingly demonstrates that respondent had very little contact with the children for three years. Paragraph 7 of the respondent’s objections to that court’s findings does not dispute that finding. Under the NCCJA and *Hamilton v. Foster, supra*, this court lost continuing, exclusive jurisdiction over *custody determinations* when the children no had significant connection with Nebraska. Thus, the South Dakota Circuit Court properly exercised jurisdiction over the custody determinations, and the filing of the certified copy of that custody decree with the clerk of this court requires this court to treat the custody decree in the same manner as a custody decree of this court.

19. Subsection (3) of § 43-1215 provides that “[i]f a person seeks to enforce in this state a custody decree of another state with respect to child support . . . , the person may commence any proceeding *allowed by law for the enforcement in this state* for such support . . . and may include in such proceeding a request for appropriate enforcement of the custody determination.” NEB. REV. STAT. § 43-1215(3) (Reissue 1998) (emphasis supplied). Because UIFSA does not authorize enforcement of the South Dakota support modification and thus this proceeding is not “allowed by law,” this subsection does not change the analysis.

20. Of course, the South Dakota modification decree only addressed Justin and Jordan. This court’s 1994 modification decree placed Joel in petitioner’s custody and the South Dakota custody modification decree did not change that custody order. Similarly, this court’s 1994 modification decree placed Jordan in petitioner’s custody and the South Dakota custody modification did not change that order. The South Dakota modification did not change custody of Jessica. Thus, only the change of custody of Justin constitutes any change from this court’s 1994 order.

21. As a result of the South Dakota custody determination, recognized by this court pursuant to § 43-1215, the respondent’s support obligation increased to \$131.00 per month under this court’s 1994 order when the South Dakota modification became effective on April 2, 2001. Thus, as of the installment due on May 1, 2001, the support obligation increased to \$131.00 per month.

ORDER: IT IS THEREFORE ORDERED that:

1. The confirmation of registration of the foreign support order is denied, and enforcement of the registered order is stayed until further order of this court.

2. The clerk of this court is directed to make any necessary entries upon the judgment records of this court to record the denial of confirmation of the registered order, and the stay of enforcement thereof.

3. The clerk is further directed to perform the duties required by §§ 43-1215 and 43-1216 with regard to the custody modification, including adjustment of the child support judgment records to reflect the change in support resulting from the South Dakota custody determination.

4. Each party shall pay such party’s own costs and attorneys’ fees.

Signed in chambers at **Ainsworth**, Nebraska, on **December 19, 2001**;
DEEMED ENTERED upon file stamp date by court clerk.

BY THE COURT:

If checked, the court clerk shall:

- Mail a copy of this order to all counsel of record and any pro se parties, **including both to the Holt County Attorney and to the petitioner.**
Done on _____, 20____ by _____.
- Comply with directions in text of order.
Done on _____, 20____ by _____.
- Note the decision on the trial docket as: [date of filing] **Signed “Order Denying Confirmation of Registered Support Order” entered.**
Done on _____, 20____ by _____.
- Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20____ by _____.
- Enter **adjustment of judgment records** on the judgment record.
Done on _____, 20____ by _____.

Mailed to:

William B. Cassel
District Judge