Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

IRENE C. GASPARIS
Crown Point, Indiana

ATTORNEY FOR APPELLEE:

TULA KAVADIAS
Kavadias & Associates, P.C.
Crown Point, Indiana

FILED
Jan 19 2011, 9:37 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF:	)	
GEORGE A. SHEFFER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 45A05-1009-DR-543
	)	
GAYLE J. SHEFFER, n/k/a	)	
GAYLE J. CURTISS,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Nanette K. Raduenz, Special Judge
Cause No. 45D03-0605-DR-496

January 19, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent George Sheffer (Father) appeals the trial court's denial of his motion to correct error. The effect of the trial court's ruling was to require Father to contribute to his childrens' post-secondary educational expenses when a dissolution of marriage decree that was entered in Michigan made no provision for those payments and Michigan law established that one of the children was emancipated. In essence, Father is challenging the trial court's ruling that the Indiana courts have continuing, exclusive jurisdiction to modify the divorce decree between Father and appellee-petitioner Gayle Sheffer (Mother) when it applied Indiana law to the child support obligation. Finding no error, we affirm the judgment of the trial court.

FACTS

The parties' marriage was dissolved on August 29, 1994, pursuant to a decree that was entered in Michigan by the Oakland County Circuit Court. In accordance with the decree, Mother was awarded physical custody of their two minor children, HLS and BAS, "until said children reach the age of eighteen years, graduate from high school, or until further order of the Court." Appellant's App. p. 21. Father was ordered to pay child support for HLS and BAS in the amount of $154 per week

> until each child is 18, and continuing beyond age 18 for the time each child is regularly attending high school on a full-time basis with reasonable expectation of completing sufficient credits to graduate from high school while residing on a full-time basis with the Plaintiff or at an institution, but in no case after the child reaches 19 ½ years of age, as provided by P.A. 237-245 1990, or until further order of the Court.

Id. at 21-22. On April 5, 2000, Father's child support obligation was increased to $242.93 per week for both children.

Sometime after the divorce, Mother and the children moved to Crown Point. On October 4, 2005, Father, while living in Chicago, filed a "Petition to Register Foreign Judgment Pursuant to I.C. § 31-18-6-2," in the Lake Circuit Court. Appellee's App. p. 1. Thereafter, on October 19, 2005, Father filed a "Verified Petition for Modification of Child Support," and petitioned the court "to modify the terms and conditions of the Foreign Judgment in the State of Michigan, Sixth Judicial County, Michigan, heretofore registered with the Court on or about October 4, 2005." Appellant's App. p. 32.

On February 22, 2007, Mother and Father entered into an "Agreed Order for Modification of Child Support" that they filed in Indiana and Michigan, pursuant to the Uniform Interstate Family Support Act[1] (UIFSA). Id. at 34-37. At that time, the parties attached an Indiana Child Support Obligation Worksheet to the agreed order, evidencing that Father's child support obligation for the parties' two minor children was calculated in accordance with Indiana law and pursuant to the Indiana Child Support Guidelines. On August 24, 2007, Father's counsel submitted a certified copy of the Indiana "Agreed Order for Modification of Child Support" to Court Clerk's Office in Oakland County, pursuant to the UIFSA. Id. at 37.

On March 21, 2009, the parties' oldest child, HLS, turned eighteen and graduated from high school in June. As a result, Father filed a "Verified Petition to Emancipate and

[1] Ind. Code § 31-18-1-1 et seq.

Modify Child Support" in the Indiana trial court on April 27, 2009. Id. at 38. At that time, the parties' son, BAS, was sixteen years old.

On July 29, 2009, Mother filed a "Verified Petition for Payment of Post-Secondary Educational Expenses and for Modification of Child Support." Id. at 40. After the trial court issued its ruling on October 29, 2009, Father filed a notice of appeal. However, we subsequently dismissed the appeal because the trial court's order was not a final appealable judgment.

Thereafter, the trial court held a hearing on Mother's petition that was based on HLS's high school graduation and enrollment at Indiana University in Bloomington. Mother also filed a petition for payment of post-secondary educational expenses as a result of BAS's graduation from high school and enrollment at Indiana University.

Following a hearing, the trial court entered an order on June 28, 2010, reducing Father's child support obligation from August 1, 2009, until December 31, 2009. However, his support obligation was modified to $232 per week beginning January 1, 2010. The trial court also granted Mother's request for contribution from Father for a portion of HLS's college expenses.

On August 13, 2010, the trial court entered an additional order granting Mother's petition for payment of post-secondary educational expenses and modification of child support with regard to BAS. Father filed a motion to correct error that the trial court subsequently denied.

Father now appeals both the June 28, 2010, and August 13, 2010, orders.

DISCUSSION AND DECISION

I. Standard of Review

We initially observe that the denial of a motion to correct error is reviewed for an abuse of discretion. Scales v. Scales, 891 N.E.2d 1116, 1118 (Ind. Ct. App. 2008). An abuse of discretion occurs where the trial court's decision is against the logic and effect of the facts and circumstances before it or if the court has misinterpreted the law. Id.

We also note that a trial court's decision in child support matters will be reversed if it is clearly erroneous or contrary to law. Young v. Young, 891 N.E.2d 1045, 1047 (Ind. 2008). A trial court's ruling concerning the modification of a child support obligation will be reversed for an abuse of discretion or clear error. Brown v. Brown, 849 N.E.2d 610, 613 (Ind. 2006).

II. Father's Contentions

Father claims that the trial court erred in ordering him to pay for the children's post-secondary educational expenses because the Michigan decree made no provision for those payments, and Michigan law established that HLS was emancipated. Put another way, Father argues that the trial court erred when it did not enforce the Michigan decree, which provided that child support payments were to cease when the children turned eighteen years old.

Father first directs us to Indiana Code section 31-18-6-11(c), in support of his claim that the Indiana trial court lacked the authority to modify any aspect of the original Michigan support order. This statute provides that

(c) An Indiana tribunal may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two (2) or more tribunals have issued child support orders for the same obligor and child, the order that is controlling and must be recognized under the provisions of IC 31-18-2-7 establishes the nonmodifiable aspects of the support order.

As referenced in this statute, Indiana Code section 31-18-2-7 provides that:

(a) If a proceeding is brought under this article and one (1) or more child support orders have been issued in Indiana or another state with regard to an obligor and a child, an Indiana tribunal shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one (1) tribunal has issued a child support order, the order of that tribunal is controlling and must be recognized.

(2) <u>If two (2) or more tribunals have issued child support orders for the same obligor and child, and only one (1) of the tribunals has continuing, exclusive jurisdiction in accordance with this article, the order of that tribunal is controlling and must be recognized</u>.

(3) If two (2) or more tribunals have issued child support orders for the same obligor and child, and more than one (1) of the tribunals has continuing, exclusive jurisdiction in accordance with this article, an order issued by a tribunal in the current home state of the child must be recognized. However, if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

(4) If two (2) or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals has continuing, exclusive jurisdiction in accordance with this article, the Indiana tribunal shall issue a child support order that is controlling and must be recognized.

(b) The tribunal that has issued an order recognized under subsection (a) is the tribunal having continuing, exclusive jurisdiction.

(c) If two (2) or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in

> Indiana, a party may request an Indiana tribunal to determine which order controls and must be recognized under subsection (a). The request must be accompanied by a certified copy of all support orders in effect. Each party whose rights may be affected by a determination of the controlling order must be given notice of the request for that determination.

(Emphasis added).

When examining the statutes as applied to these circumstances, it is apparent that both Indiana and Michigan have issued child support orders regarding Father's support obligation for the parties' two children. The last Michigan support order was issued on April 5, 2000, and the most recent Indiana child support order prior to the proceedings in this case was issued on February 22, 2007. Appellant's App. p. 34. Therefore, when applying Indiana Code section 31-18-2-7(2), the Indiana trial court has "continuing, exclusive jurisdiction" because it acquired jurisdiction when (1) Father registered the parties' Michigan divorce decree with the Indiana tribunal; and (2) Father subsequently sought modification of the divorce decree in Indiana and executed an agreed order for modification of child support that was approved and entered in Indiana.

Moreover, Indiana Code section 31-18-6-11(d) provides that "[u]pon the modification of a child support order issued in another state, an Indiana tribunal becomes the tribunal of continuing, exclusive jurisdiction." In light of this statute, Father's execution and submission of the "Agreed Order for Modification of Child Support" that was approved by the Indiana trial court on February 22, 2007, gave the Indiana courts "continuing, exclusive jurisdiction." Moreover, Indiana Code section 31-18-3-1(b)(5) states that the provisions of article 18, chapter 3, apply to all proceedings involving

registration of an order for child support of another state for modification under Indiana Code section 31-18-6. Indiana Code section 31-18-3-3 states that

> Except as otherwise provided by this article, a responding Indiana tribunal:
>
> (1) shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in Indiana and:
>
> (A) may exercise all powers; and
>
> (B) provide all remedies;
>
> available in the proceedings; and
>
> (2) <u>shall determine the duty of support and the amount payable under the child support guidelines adopted by the Indiana supreme court and any other relevant Indiana law</u>.

(Emphasis added).

In accordance with Indiana law, child support ceases when the child attains twenty-one years of age, absent circumstances justifying emancipation prior to age twenty-one. I.C. § 31-16-6-6. The trial court may also order a parent to pay the child's health care costs and higher education expenses. I.C. § 31-16-6-2. Finally, Indiana Code section 31-18-1-3 defines a child support order as a "support order for a child who has attained the age of majority under the law of the issuing state."

Illustrative here, is this court's opinion in <u>Hoehn v. Hoehn</u>, 716 N.E.2d 479 (Ind. Ct. App. 1999), where Father contested the jurisdiction of the Indiana trial court to modify the parties' Georgia divorce decree that provided that his child support obligation

would terminate when their child turned eighteen. Mother successfully registered the parties' Georgia divorce decree in Indiana. Like the circumstances here, Father later filed a petition to modify his child support obligation but no hearing was held because the parties entered into an agreed order for modification that was approved and entered by the Indiana court. Father appealed a later modification order entered by the Indiana court that modified his child support and required him to contribute to the college expenses for the parties' eighteen-year-old son.

On appeal, we observed that Father had submitted to the personal jurisdiction of the Indiana courts when he sought affirmative relief, i.e., the modification of child support, in 1988, and that the Indiana trial court had continuing, exclusive jurisdiction over the parties' child support order. Similarly, it is apparent that Father, in this case, submitted to the jurisdiction of the Indiana courts when he successfully sought the modification of his obligation for HLS and BAS before an Indiana court in 2005.

The Hoehn court also determined that the trial court properly applied Indiana law, instead of Georgia law, when it modified the Georgia decree as to the duration of the child support obligation. Id. at 484. The evidence established that the parties had previously modified Father's child support obligation in Indiana "in accordance with the Indiana Guidelines standards." Id. at 483.

Here, Father's child support obligation for HLS and BAS was modified by the Indiana court in 2007 pursuant to an "Agreed Order for Modification of Child Support" that was based on the application of the Indiana Child Support Guidelines. Applying the

rationale set forth in Hoehn, we can only conclude that the trial court did not err in its June 28, 2010 order when it determined that HLS was not emancipated upon attaining the age of eighteen and ordering Father to continue payments toward her support, health care costs, and post-secondary educational expenses as permitted under Indiana law. Moreover, the trial court did not err in modifying the June 28, 2010, order on August 13, 2010, when it ordered Father to provide continued support of HLS and BAS and for payment of their post-secondary educational expenses.

Finally, although Father maintains that the modification should not be permitted to stand in light of the UIFSA's goal to prevent "forum shopping," the evidence shows that Father himself invoked the jurisdiction of the Indiana courts when he filed his "petition to register foreign judgment pursuant to I.C. § 31-18-6-2" and when he sought modification of his Michigan child support obligation in the Indiana courts. Moreover, it was Father who executed an agreed order for the reduced child support obligation that was based on Indiana law and approved by the Indiana trial court. Thus, Father's claim fails. For all these reasons, we conclude that the trial court properly exercised jurisdiction in this case in modifying the parties' dissolution and support decree under Indiana law.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.