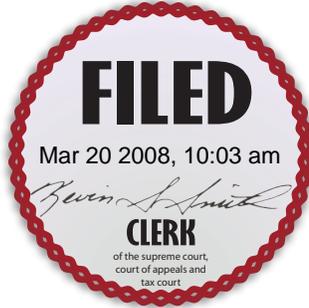


FOR PUBLICATION



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**IN THE
COURT OF APPEALS OF INDIANA**

ELIZABETH (BEVERS) DRYDEN,)

Appellant-Petitioner,)

vs.)

No. 53A04-0705-CV-259

KEVIN BEVERS,)

Appellee-Respondent.)

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Richard D. McIntyre, Special Judge
Cause No. 53C06-9305-DR-398

March 20, 2008

OPINION - FOR PUBLICATION

VAIDIK, Judge

Case Summary

After a divorced couple and their three children all moved from Indiana to Florida, Kevin Bevers (“Father”) filed a motion to transfer the case. The trial court granted the motion and transferred the case to the State of Florida. Elizabeth Dryden (formerly Bevers) (“Mother”) filed a motion to correct error, alleging that the trial court erred in transferring jurisdiction over the case. The trial court denied her motion, and Mother appeals. She argues that Father waived the jurisdictional provisions of the Uniform Child Custody Jurisdiction Law (“UCCJL”) and the Uniform Interstate Family Support Act (“UIFSA”) by not objecting to the Indiana court’s exercise of jurisdiction at an earlier date and that Indiana must continue exercising jurisdiction pursuant to these statutes. Because the underlying dispute does not pertain to child custody matters, the UCCJL is irrelevant to this appeal. As it is unclear whether the trial court intended to transfer limited jurisdiction to enforce the order or exclusive jurisdiction to modify the order, we address both types of jurisdiction in this case. We conclude that Indiana has jurisdiction to enforce its order, and it was not an abuse of discretion to transfer the case to Florida for enforcement of the Indiana order. Regarding jurisdiction to modify Indiana’s order, while the Indiana statute indicates that we have continuing, exclusive jurisdiction over the parties’ child support order, we do not under the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA). Because the FFCCSOA provides that Indiana no longer has continuing, exclusive jurisdiction over prospective modifications of the support order and because both Florida and Indiana have the authority to enforce the existing Indiana order, we affirm.

Facts and Procedural History

Father and Mother were married on March 5, 1985, and lived together in Bloomington, Indiana. Three children were born of their marriage: C.B., born July 7, 1986, and E.B. and N.B., twins born on September 21, 1989. After “highly contested” marital dissolution proceedings, Appellant’s App. p. 42, Father and Mother divorced on July 15, 1994. The trial court granted Father custody of C.B., while Mother received custody of the twins. During the ensuing twelve-and-one-half years, the parties each moved out-of-state and filed numerous motions with the Indiana trial court regarding child custody, child support, and enforcement of the terms of their divorce decree.

On December 28, 2006, twelve years after Mother moved to Georgia and, later, Florida and eight years after Father moved to Maryland and then Florida,¹ Father filed a motion in Monroe Circuit Court entitled Motion for Permanent Change of Venue and Jurisdiction.² The motion provided, in part:

1. Comes now, [Father], pro se, respectfully requests the Court approve a Permanent Change of Venue and Jurisdiction to the Circuit Court of Polk County in the State of Florida; thereby relinquishing all legal interests and equities of the State of Indiana. All parties involved in the above action are permanent residents of the State of Florida.

4. [Father] has addressed the issue of transfer of child support payments to the Clerk of Circuit Court of Polk County, Bartow, Florida Child

¹ C.B., then twenty-years-old, attended college in Pennsylvania. The other children lived in Florida on this date.

² We have previously described the difference between jurisdiction and venue: “Jurisdiction involves a court’s power to hear a particular group of cases; venue connotes the proper situs for the trial of an action.” *Cabanaw v. Cabanaw*, 648 N.E.2d 694, 697 (Ind. Ct. App. 1995).

support is currently paid by [Father] for E[.] and N[.] Bevers, who have resided in Florida for ten years . . . , to the Clerk of Monroe County, Bloomington, Indiana.

5. The Clerk advised [Father] as follows: once the State of Indiana (i.e. Monroe County Circuit Court VI) approves and issues the Order for Permanent Change of Venue and Jurisdiction, [Father] will file the approved Order with the Clerk of Circuit Court Polk County and pay the appropriate filing fees . . . to set up the child support payment program at which time the Court will assign the case and issue the order accordingly.

Id. at 103-04. Mother filed a motion to dismiss Father’s motion to transfer the case, but the trial court granted Father’s motion on February 14, 2007. *Id.* at 111. The court’s order provided in part, “this matter is ordered transferred to the appropriate Court in the county of the Petitioner, Elizabeth Dryden’s residence.” *Id.* Subsequently, both parties filed motions to correct errors, which the trial court denied.³ Father filed a petition with the appropriate Florida court to domesticate the parties’ most recent child support and custody order, but the Florida court issued an order deferring action “[u]ntil the Court receives a certification from the Indiana courts that there is no present action pending.” *Id.* at 163. Mother now appeals the denial of her motion to correct error.

Discussion and Decision

Mother appeals the denial of her motion to correct error, arguing that the trial court improperly transferred the case to Florida. She contends that Father waived any objection to Indiana’s jurisdiction over the parties’ future child custody and support proceedings and that the jurisdiction provisions of the UCCJL, Ind. Code § 31-17-3-1 to

³ The trial court did not issue rulings on these two motions, and thus they were deemed denied after forty-five days. Ind. Trial Rule 53.3.

–25,⁴ and the UIFSA, Ind. Code § 31-18-1-1 to 31-18-9-4, dictate that Indiana should continue exercising jurisdiction over the case.

On appeal, we review a trial court’s denial of a motion to correct error for an abuse of discretion. *Lighty v. Lighty*, 879 N.E.2d 637, 640 (Ind. Ct. App. 2008), *reh’g denied*. “An abuse of discretion occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before it, or the reasonable inferences drawn therefrom.” *Id.* We consider the standard of review for the underlying ruling, *id.*, which was the grant of Father’s motion to transfer the case to Florida. As Mother’s arguments regarding the transfer of jurisdiction involve the interpretation of statutory provisions, namely the jurisdiction provisions of the UCCJL and the UIFSA, our review of this matter is *de novo*. *Cox v. Cantrell*, 866 N.E.2d 798, 805 (Ind. Ct. App. 2007), *reh’g denied, trans. denied*.

Mother’s arguments are based upon the application of the jurisdiction provisions of the UCCJL and the UIFSA. We observe that Mother’s motion to correct error and the trial court’s underlying ruling effectuating the transfer of the parties’ case to Florida did not pertain to any ongoing disputed child custody matters. Instead, Father’s motion for transfer of jurisdiction spoke only of his desire to domesticate the parties’ child support order in Florida, Appellant’s App. p. 103-04, and Mother’s motion to correct error refers only to concerns regarding the child support order, *id.* at 28 (“[Mother] respectfully

⁴ The UCCJL is presently codified at Indiana Code § 31-21-1-1 to 31-21-7-3. *See* P.L. 138-2007, § 45 (eff. July 1, 2007). However, Indiana Code § 31-21-7-3 provides that “[a] motion or other request for relief made: (1) in a child custody proceeding; or (2) to enforce a child custody determination; that was commenced before July 1, 2007, is governed by the law in effect at the time the motion or other request is made.” Thus, because the motion at issue in this case was filed in March 2007, the former version of the statute would apply if we were to utilize the UCCJL in our analysis.

requests that the Court modify its Order of February 14, 2007, with respect to transfer of child support payments to the state of Florida. In the alternative, [Mother] requests that the Court make clear in its order allowing transfer that all standing orders of this Court are to be enforced and that [Father's] support obligation continues until the children reach their twenty-first (21st) birthday.”). As such, the UCCJL is irrelevant to our resolution of this appeal. *See Counciller v. Counciller*, 810 N.E.2d 372, 376 (Ind. Ct. App. 2004) (declining to address UCCJL argument where the present dispute involved only child support matter).

As to the UIFSA, we must determine whether Father's request for a change of jurisdiction is waived for being untimely. Mother is correct in her assertion of the general rule that “[o]bjections to the court's exercise of jurisdiction are waived if not made in a proper and timely fashion.” *In re A.N.W.*, 798 N.E.2d 556, 560-61 (Ind. Ct. App. 2003), *trans. denied*. Mother argues that Father may not object to Indiana's jurisdiction because he waited too long to file the objection after he left the State of Indiana. Before Father's request for transfer, the record does not reflect that any other state sought or exercised jurisdiction over the parties' support order, and therefore there was no reason for Father to object to the Indiana trial court's exercise of jurisdiction. Father filed his motion to transfer the case, and we find that he has not waived his ability to ask that the case be sent to Florida. There were no pending motions on child support. It is true that the parties lived outside of Indiana for a period of years before Father filed his motion with the court, and there is no indication that Father is trying to escape a potentially unfavorable future ruling under Indiana law by asking that the case be

transferred. Father is not barred from bringing it to the trial court's attention that all relevant persons are now living in Florida and asking that the court transfer jurisdiction over the case to that state. We find that he has not waived the argument that Florida can properly exercise jurisdiction over the order.

We proceed to a review of the jurisdictional requirements found in the UIFSA. A primary purpose of the UIFSA is to simplify child support matters and the collection of child support in today's mobile society. *Tate v. Fenwick*, 766 N.E.2d 423, 426 (Ind. Ct. App. 2002). It is a "mechanism . . . for cooperation between state courts in enforcing duties of support." *Johnston v. Johnston*, 825 N.E.2d 958, 962 (Ind. Ct. App. 2005) (citing *Stidham v. Whelchel*, 698 N.E.2d 1152, 1156 n.1 (Ind. 1998)). Among other things, the statute provides guidance for Indiana trial courts asked to exercise jurisdiction over child support matters where one or both parties do not live in the state and where another state's courts have already exercised jurisdiction or may seek to do so.

The parties raise two aspects of the jurisdictional issue – jurisdiction to enforce the order and jurisdiction to modify the support order. It is not entirely clear whether the trial court intended to transfer limited jurisdiction to enforce the order or exclusive jurisdiction to modify the order, but it appears that the court intended to transfer jurisdiction to both enforce and modify the order. Appellant's App. p. 145 ("This cause is transferred in its entirety . . ."). Regarding jurisdiction to simply enforce the order, it is true that Indiana courts may always enforce valid child support orders. Ind. Code § 31-18-2-5(c). However, it is also true that the trial court as the issuing court had the power to request a tribunal of another state to enforce its order. Ind. Code § 31-18-2-3(1). The trial court's

transfer order, inasmuch as it is a request for Florida to enforce the Indiana order, was not an abuse of discretion in that it is a request made pursuant to Indiana Code § 31-18-2-3(1).

Regarding jurisdiction to modify the support order, a state with continuing, exclusive jurisdiction may modify a support order.⁵ The UIFSA provides:

(a) An Indiana tribunal that issues a support order consistent with Indiana law has continuing, exclusive jurisdiction over a child support order:

(1) if Indiana remains the residence of the:

(A) obligor;

(B) individual obligee; or

(C) child for whose benefit the support order is issued;

or

(2) until each individual party has filed written consent with the Indiana tribunal for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

I.C. § 31-18-2-5(a) (emphasis added). Father contends that because neither of the parties nor the children live in Indiana, I.C. § 31-18-2-5(a)(1), Indiana does not have continuing jurisdiction under the UIFSA. However, as we have observed in the past, “[t]he words ‘and’ and ‘or’ as used in statutes are not interchangeable, being strictly of a conjunctive and disjunctive nature respectively.” *In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (citing *Bourbon Mini Mart, Inc. v. Comm’r, Ind. Dep’t of Env’tl. Mgmt.*, 806 N.E.2d 14, 20 (Ind. Ct. App. 2004)). The use of “or” in Indiana Code § 31-18-2-5(a) makes the statutory provision disjunctive. Thus, even though no persons involved in this case remain in Indiana, we find that the clear language of the statute provides that Indiana retains continuing, exclusive jurisdiction under subsection (a) if both parties have not

⁵ The parties’ arguments regarding jurisdiction are purely statutory. They make no constitutional arguments, and we limit our analysis to the statutory question.

“filed written consent with the Indiana tribunal for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.” I.C. § 31-18-2-5(a)(2); *see Brickner v. Brickner*, 723 N.E.2d 468, 472 (Ind. Ct. App. 2000) (describing the statutory language of the UIFSA as “plain and unambiguous”), *trans. denied*. Our reading of subsection (a) is supported by an earlier decision from this court that read the statute in like fashion. In *Loden v. Loden*, 740 N.E.2d 865, 870 (Ind. Ct. App. 2000), another panel of this court determined that where no parties or affected children resided in Indiana and the parties did not file written consent with the Indiana court for a Texas court to modify their support order, “it appear[ed] that the Indiana court retained continuing, exclusive jurisdiction pursuant to subsection (a) of UIFSA.” *Loden* went on to explain that, in that case, other subsections of Indiana Code § 31-18-2-5 dictated that Indiana lost its continuing, exclusive jurisdiction. Specifically, where another state’s tribunal has modified the support order, Indiana loses the exclusive jurisdiction that it would otherwise have under subsection (a). I.C. § 31-18-2-5(b), (c), (d); *Loden*, 740 N.E.2d at 870-71. In the case before us, however, no other states have acted to modify the support order, and subsection (a) is the only provision pertinent to our discussion. *See also Brickner*, 723 N.E.2d at 473 (observing that the “UIFSA . . . impart[s] continuing, exclusive jurisdiction upon Indiana courts to enforce their own support decrees in accordance with Indiana law—jurisdiction that can be abrogated only by the affirmative conduct of the parties (e.g., the filing of written consent that another state’s jurisdiction apply) or by the actual modification of support by another tribunal”).

In this case, Mother has not filed written consent for a Florida court to assume continuing, exclusive jurisdiction over the parties' child support order. Thus, pursuant to Indiana Code § 31-18-2-5(a)(2), Indiana retains continuing, exclusive jurisdiction over the parties' child support order.

However, we are faced not only with an Indiana statutory provision regarding a state's continuing, exclusive jurisdiction over a child support order, but also with the parallel provision under the federal FFCCSOA, 28 U.S.C. § 1738B(d). Pursuant to the Supremacy Clause of the United States Constitution, "[t]he provisions of FFCCSOA are . . . binding on all states and supercede any inconsistent provision of a uniform state law such as UIFSA." *Loden*, 740 N.E.2d at 871. 28 U.S.C. § 1738B(d) provides:

(d) **Continuing jurisdiction** – A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order *if the State is the child's State or the residence of any individual contestant* unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.^[6]

(Emphasis added). The distinction between this provision and Indiana Code § 31-18-2-5(a) is crucial. As we just concluded, under the Indiana provision, Indiana retains continuing, exclusive jurisdiction when, even though no persons involved in the case remain in Indiana, both parties have not "filed written consent with the Indiana tribunal for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction." I.C. § 31-18-2-5(a)(2). However, under the FFCCSOA, Indiana does not

⁶ Subsections (e) and (f) provide for the authority to modify orders and the recognition of child support orders, respectively.

have continuing, exclusive jurisdiction if it is not “the child’s State⁷ or the residence of any individual contestant.” 28 U.S.C. § 1738B(d). The FFCCSOA contains no requirement that the parties file written permission with the Indiana court in order to allow another state to assume jurisdiction. Instead, written consent is merely another way for a different state to obtain continuing, exclusive jurisdiction. 28 U.S.C. § 1738B(e)(2)(B).⁸ We acknowledge that another panel of this court has previously written that “the FFCCSOA section pertaining to a state’s continuing, exclusive jurisdiction with respect to its own child support orders mirrors Ind. Code § 31-18-2-5.” *Brickner*, 723 N.E.2d at 472. Our reading of the two provisions, however, leads us to disagree, and the federal provision controls.

Additionally, our conclusion that the controlling federal provision relinquishes exclusive jurisdiction over a child support order to a state with a closer nexus with the affected persons is buttressed by fairly recent revisions to the model UIFSA, which have clarified that this is the intended result under the UIFSA. The National Conference of

⁷ The “child’s State” is the “State in which a child resides.” 28 U.S.C. § 1738B(b).

⁸ 28 U.S.C. § 1738B(e) provides:

(e) **Authority to modify orders** – A court of a State may modify a child support order issued by a court of another State if –

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order *because that State no longer is the child’s State or the residence of any individual contestant*; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(Emphasis added). We recognize that the language contained in this subsection is similar to the language found in Indiana Code § 31-18-2-5(a). However, the language of Indiana Code § 31-18-2-5(a) and 28 U.S.C. § 1738B(d) and (e) render the state and federal laws in conflict because they define continuing, exclusive jurisdiction differently.

Commissioners on Uniform State Laws, the organization that drafted the model UIFSA from which Indiana derived its version of the UIFSA, issued amendments to the UIFSA in 2001.⁹ Notably, the 2001 amendments replace language similar to that found in Indiana Code § 31-18-2-5(a) regarding continuing, exclusive jurisdiction over a child support order. *See* Unif. Interstate Family Support Act § 205(a) (amended 2001), 9(IB) U.L.A. 192 (2005). The commentary following the revision explains,

As long as one of the individual parties or the child continues to reside in the issuing State, and as long as the parties do not agree to the contrary, the issuing tribunal has continuing, exclusive jurisdiction over its child-support order – which in practical terms means that it may modify its order. . . . The other side of the coin follows logically. Just as Subsection (a) defines the retention of continuing, exclusive jurisdiction, by clear implication the subsection also identifies how jurisdiction to modify may be lost. That is, if all relevant persons – the obligor, the individual obligee, and the child – have permanently left the issuing State, the issuing State no longer has an appropriate nexus with the parties or child to justify the exercise of jurisdiction to modify its child-support order.

Comment, 9(IB) U.L.A. 194.

Because the provision of the FFCCSOA is binding and supercedes the state's provision, we conclude that Indiana no longer has continuing, exclusive jurisdiction over the child support order. Rather, under the FFCCSOA, Florida has continuing, exclusive jurisdiction for any future proceedings involving modification matters. *See* Fla Stat. § 88.2061(2). Further, although Indiana retained the jurisdiction to enforce its own order, the trial court acted within its discretion in opting not to continue exercising its limited

⁹ These amendments were approved by the ABA in February 2002. ABA Center on Children and the Law Uniform Acts & Conventions, <http://www.abanet.org/child/uniform.shtml> (last visited Feb. 20, 2008).

jurisdiction upon Father's motion to transfer the case. Therefore, the trial court did not abuse its discretion in denying Mother's motion to correct error.¹⁰

We affirm the judgment of the trial court.

SHARPNACK, J., and BARNES, J., concur.

¹⁰ We encourage the General Assembly to revisit the language of Indiana Code § 31-18-2-5(a), given our conclusion that this subsection conflicts with federal law.