

MI IQ

Michigan Interstate Issues and Questions

Answered by SCAO FOCB

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Question: When requested by a party, should a friend of the court office initiate a review or seek local modification of a final order or judgment issued by that court when all of the parties have left the state and children supported in that order no longer reside in Michigan?

Answer: No. The specific rationale for not modifying an order when all the parties and children have left the state differs depending on whether another state subsequently modified Michigan's support order.

When another state has registered and modified Michigan's support order, MCL 552.1224(2) requires recognition that the other state has assumed continuing exclusive jurisdiction and bars Michigan from exercising continuing jurisdiction to modify the order.¹

When Michigan alone has issued a support order, the authority to modify is questionable. Neither the Michigan Court of Appeals, nor the Michigan Supreme Court have issued decisions to settle the question. UIFSA suggests, although it does not clearly preclude, that when all of the parties and children no longer reside in Michigan, since jurisdiction is no longer exclusive, that our courts should not exercise continuing jurisdiction to modify a support order.²

FFCCSOA requires that "appropriate authorities of each State . . . shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i). . . . If there is no individual contestant or child residing in the issuing State, the party . . . seeking to modify . . . a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification."³

¹ The federal Full Faith and Credit for Child Support Orders Act (FFCCSOA) contains similar language. 28 USC 1738B.

² UIFSA's actual language can be interpreted as restricting states from exercising continuing jurisdiction and modifying its orders after all parties and children reside elsewhere or can be read in a manner that appears to permit it. Although not statutorily binding, NCCUSL official comments clarify that issuing tribunals were not supposed to modify orders when all of the parties and children no longer reside there.

³ 28 USC 1738B (a) and (i).

In a case where no contestant or child still resides in MI, despite the possibility that our courts have continuing jurisdiction to modify a support order, FFCCSOA requires a party seeking modification of an order issued in another state be registered in a state with jurisdiction over the other party.

If modification occurs after all the parties and children have left a state, that order may be void due to lack of subject matter jurisdiction. A trend in other states that have appellate decisions regarding orders being registered has been to find that modifications made after all parties have left a state as being void, and therefore unrecognizable.

If neither contestant nor child remains in MI, friend of the court offices should not initiate a review or seek modification because doing so (1) violates FFCCSOA,⁴ (2) permits a party to circumvent federal law,⁵ and (3) the strong likelihood that any resulting order would be void or voidable due to our court's loss of personal or subject matter jurisdiction. When a party requests that the FOC initiate a review of the MI order, the office should deny the request on the basis that FFCCSOA requires registration for modification in a state with jurisdiction over the other party.

A party successfully challenging Michigan's jurisdiction either at the time of hearing, on appeal, seeking to set aside the resulting order, or challenging the order's validity in a later registration in another state would mean that all of the resources spent by the FOC and court were unnecessarily wasted. It is more cost effective for FOCs to recognize the requirement that modification be sought elsewhere and so direct the requesting non-resident party, than it is to expend the resources on a review and modification that have a high potential for being legally meaningless, or dealing with federal and other states' officials.⁶

UIFSA should be interpreted, although it does not expressly preclude, that when all of the parties and children no longer reside in an issuing state, since jurisdiction is no longer exclusive, that issuing tribunal should not exercise continuing jurisdiction to modify a support order. Neither the Michigan Court of Appeals, nor the Michigan Supreme Court have issued decisions to settle the question. Other states have issued opinions in the last few years that cover the issue. The following are three recent decisions:

In re Marriage of Stewart (Missouri)

Dismissed for Lack of Subject Matter Jurisdiction: Courts have no subject matter jurisdiction over motions to modify support orders when neither parent, nor the affected child reside in the issuing state.

<http://www.courts.mo.gov/courts/pubopinions.nsf/ccd96539c3fb13ce8625661f004bc7da/3256b244e16b87c0862572720058d633>

⁴ The FOC qualifies as an "appropriate authority of a State", which 28 USC 1738B(a) restricts from seeking modification.

⁵ 28 USC 1738B(i)

⁶ The SCAO, OCS, and a local friend of the court office have had to spend a great deal of time dealing with federal child support officials and another state's child support agency documenting, explaining, and seeking to rectify an order that the MI court ended up setting aside due to a lack of continuing jurisdiction to modify custody and support.

Missouri v Grate

A judge does not have authority to issue an order due to a loss of subject matter jurisdiction once all parties and children have left the state.

<http://www.courts.mo.gov/courts/pubopinions.nsf/ccd96539c3fb13ce8625661f004bc7da/272fe44ca573948e862572250065918b>

Gibson v. Gibson

Once the issuing state has lost continuing, exclusive jurisdiction and a motion to modify child support is filed, upon proper motion, the order for child support should be forwarded to an appropriate tribunal that can enter an order and assume CEJ. The party desiring modification has the burden to take appropriate action in the appropriate state. When parties and children leave the issuing state, it loses jurisdiction to modify, but retains jurisdiction to enforce.

KY COA 2004-CA-001924 <http://162.114.92.72/COA/2004-CA-000313.pdf>

Please direct any comments or additional questions to 517-373-2468 or bartelsb@courts.mi.gov.