

The Practitioner Family Law

Juggling Jurisdictions

Rules Governing Changes to Another State's Child Support

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Many family law practitioners have been confused about when and under what circumstances a California court can modify another state's child support order. The confusion may stem from the wording of Family Code Section 4853, which states: "(a) Except as specified in this section, upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state."

This provision may lead one to believe that by registering a foreign support order, you can treat it like any other California child support order and therefore, modify it by filing an order to show cause.

The 2nd District Court of Appeal addressed this issue in *Kilroy v. Superior Court of California*, 97 Daily Journal D.A.R. 5421 (April 30, 1997). The appellate court analyzed the case under the Full Faith and Credit for Child Support Act, 28 U.S.C. Section 1738B, which supersedes California law. That act operates much like the Uniform Child Custody Jurisdiction Act, California Family Code Section 3400 et seq., which governs conflict-of-law questions in interstate custody disputes.

The facts reveal that Kilroy lives in California and Cagle, the mother, and the child live in Georgia. On May 10, 1990, Kilroy and Cagle entered into an agreement for child support. Kilroy agreed to pay Cagle \$2,750 per month. On July 31, 1996, Cagle registered the Georgia support order in the Superior Court of California under Family Code Section 4853 and, shortly thereafter, filed an order to show cause for modification. Kilroy attacked California's jurisdiction to modify the Georgia order under the Full Faith and Credit for Child Support Act by filing a motion to quash the order to show cause. The trial court denied his motion and Kilroy appealed.

The 2nd District held that California does not have jurisdiction to modify a child support order originally issued in Georgia. The court's analysis is a helpful framework to follow when dealing with an interstate child support case.

The Full Faith and Credit for Child Support Act states the following: "(a) General rule. The appropriate authorities of each State (1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and (2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i)." Under the rules for statutory review as outlined above, the 2nd District held that California could modify the Georgia child support order only if the conditions set forth in 28 U.S.C. Sections 1738B(e), 1738B(f) and 1738B(i) were met. The 2nd District

examined each of the subsections to determine if the case facts met the conditions as set forth below:

"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 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

1738B(f), which requires that if none of the contestants of the child lives in the state that issued the original order, the order must be registered in the state which has jurisdiction over the nonmoving party.

Here, Cagle registered the order in California where the nonmoving party, Kilroy, resides. However, Cagle and the child still live in Georgia, the issuing state. Consequently, Section 1738B(f) is not satisfied. This, in turn, defeats Section 1738B(e)(1).

When the issuing state no longer has continuing, exclusive jurisdiction over the case because neither the child nor any of the contestants still reside in the state, or all of the contestants consent to the issuing state's relinquishment of jurisdiction, Section 1738B(e)(2) applies. As stated above, Cagle and the child still reside in Georgia. And Kilroy, by filing the motion to quash, has said he does not consent to the change in jurisdiction. Therefore, under Section 1738B(e)(2), it still appears California does not have jurisdiction.

The last condition, Section 1738B(f), specifies which order must be recognized if there are two or more orders in effect regarding the obligor and the child. This provision helps clear the confusion that arises when parties have two or more conflicting orders from different states. In *Kilroy*, there is only one existing child support order. Under Section 1738B(f)(1), the relevant provision, if there is only one order it must be recognized. Therefore, the Georgia order is the only order that can be in effect regarding Kilroy and his child.

If there had been two or more orders, then the court would have had to look at Sections 1738B(f)(2), 1738B(f)(3) and 1738B(f)(4) to determine which order was controlling. If one state has continuing, exclusive jurisdiction over the action, its order would control. If two states qualify as having continuing, exclusive jurisdiction over the action, then the order of the child's current home state, or if none, then the most recent order would control. If none of the states involved qualifies as having continuing, exclusive jurisdiction, either because neither any of the contestants nor the child resides there, or there is no home state, then a court can issue an order and it must be recognized.

Kilroy makes it clear that as long as one of the contestants or the child still lives in the issuing state, and one of the parties does not consent to the change in jurisdiction, the proper forum to bring the modification is where the child support order was originally obtained.

Although this outcome will benefit parties requesting the modification who currently reside in the issuing state, it may cause a problem for parties seeking a modification who have left the issuing state. This is especially true for people with low income, or people who have fled the issuing state due to domestic violence.

In *Kilroy*, the 2nd District also addressed the constitutionality of the Full Faith and Credit for Child Support Act and held that it was constitutional. The *Kilroy* court stated that Congress had the authority to regulate interstate child support orders under the powers granted Congress by the U.S. Constitution, specifically the Commerce Clause.

The court's analysis in 'Kilroy' is a helpful framework to follow when dealing with an interstate child support case.

order." 28 U.S.C. Section 1738B(e).

"Recognition of child support order. If [one] or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

"(1) If only [one] court has issued a child support order, the order of that court must be recognized. (2) If [two] or more courts have issued child support orders for the same obligor and child, and only [one] of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized. (3) If [two] or more courts have issued child support orders for the same obligor and child, and more than [one] of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but 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] or more courts have issued child support orders of the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court may issue a child support order, which must be recognized. (5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction." 28 U.S.C. Section 1738B(f).

"Registration for modification. If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmoving for the purpose of modification." Section 1738B(g), referred to in Section 1738B(e)(1).

After outlining the relevant provisions of the Full Faith and Credit for Child Support Act, the 2nd District applied the rules in *Kilroy* as follows:

The first condition which needs to be met is Section 1738B(e), which has two parts. The first refers the reader to

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