Domestic Relations -- Conflict of Laws -- Uniform Reciprocal Enforcement of Support Act

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corpus by two petitioners in state custody who had tried to arrest certain persons whom they suspected were introducing liquor into Osage County, Oklahoma (a felony). The suspected ones had fled in an automobile and the petitioners had fired their guns at the automobile and killed one Mosier. The court felt that the fact that all the occupants of the car except one were known by the officers to be settled residents of a nearby town only five miles away and the fact that the suspected ones were heading toward their homes at the time rendered it difficult to conclude that a person of ordinary prudence could have believed that it was necessary to fire into the automobile to prevent escape.

Concluding, it seems that even if the North Carolina Supreme Court does not follow the strong dicta enounced in *State v. Bryant* which distinguished between types of felonies, an arresting or custodial officer may find it difficult to show necessity for the use of deadly force in preventing the escape of the minor felon.

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Domestic Relations—Conflict of Laws—Uniform Reciprocal Enforcement of Support Act

In a suit brought in Arkansas under the Uniform Reciprocal Enforcement of Support Act[1] the petitioner filed the necessary papers,[2] which were certified and sent to the Superior Court of Edgecombe County[3] and which charged her husband with non-support of their children. After concluding that responsibility to support the children had "'. . . already been found to exist by a court of competent jurisdiction . . . in the State of Arkansas,'"[4] the superior court entered judgment, requiring the husband to pay into the Edgecombe County Welfare Department the money for support, which was to be forwarded to Arkansas, to be transmitted to petitioner, then residing in Virginia.[5]

On appeal the judgment of the lower court was reversed, the reason being the three-state nature of the proceedings in this case. In the opinion it was said:

> "We do not think the act should be interpreted so as to apply to a situation other than one where the obligee is present in the Initiating State.... To interpret the act so as to permit an

[1] 9A UNIFORM LAWS ANN. 58 (Supp. 1954); ARK. STAT. ANN. §§ 34-2401 to 34-2427 (Supp. 1953); N. C. GEN. STAT. §§ 52A-1 to 52A-19 (Supp. 1953). Arkansas had repealed the 1950 Uniform Act, 9A ULA 58, 66 (Supp. 1954), and adopted it as amended in 1952, 9A ULA 58, 92 (Supp. 1954). North Carolina had adopted substantially the Uniform Act of 1950. For a discussion of the North Carolina Act see Note, 29 N. C. L. REV. 351, 423 (1951).

[2] ARK. STAT. ANN. § 34-2410 (Supp. 1953).

[3] ARK. STAT. ANN. § 34-2413 (Supp. 1953).

[4] Mahan v. Read, 240 N. C. 641, 643, 83 S. E. 2d 706, 708 (1954).

[5] Mahan v. Read, 240 N. C. 641, 83 S. E. 2d 706 (1954).

> obligee to pursue a remedy through the courts of two states when the obligee is not present in either one of them and perhaps on the move from place to place would so complicate and confuse the procedure thereunder as to impair seriously its manifest purpose and its usefulness in proper cases."[6]

For this reason it was held that the lower court had no authority to make an award for transmittal to the Arkansas court, to be transmitted in turn to the petitioner in Virginia.

The Uniform Reciprocal Enforcement of Support Act[7] (hereinafter referred to as the Act) was designed to cope with a problem that had for many years been a thorn in the flesh of welfare departments all over the United States.[8] When a husband or father deserted his family and fled to another state, little could be done to force him to provide for his dependents. Civil proceedings in another jurisdiction were usually beyond the means of those left destitute, and criminal prosecution was futile as a means of obtaining support.[9] Those left without maintenance became an increasing burden on charitable organizations and welfare departments.[10] This was the state of affairs considered by its sponsors when reciprocal legislation on the question was proposed.

The present case does not exemplify the typical situation as envisioned by the framers of the Act in that it ". . . presents the problem of the *roving obligee* rather than the *fugitive obligor*."[11] The husband and wife resided in North Carolina until the wife left their place of abode and removed to Arkansas, taking their children with her and obtaining a divorce from the husband, who remained in North Carolina. Desertion by the wife does not affect the duty of the husband to support his children, nor is it necessary that the husband or father be a *fugitive* before support is imposed under the Act.[12]

[6] *Id.* at 647, 83 S. E. 2d at 711 (1954).

[7] As of Dec. 1, 1954, of 48 states and 4 territories all but Nevada and District of Columbia had enacted some form of reciprocal legislation on this question, 5 states having adopted the Council of State Governments' form of Support of Dependents Act, which is similar to the Uniform Reciprocal Enforcement of Support Act. 1954 HANDBOOK OF NATIONAL COMMISSIONERS ON UNIFORM STATE LAWS 227.

[8] See Notes, 25 TEMP. L. Q. 336 (1952) and 45 ILL. L. REV. 252 (1951).

[9] See Brockelbank, *The Problem of Family Support: A New Uniform Act Offers a Solution*, 37 A. B. A. J. 93 (1951).

[10] *Ibid.*

[11] Mahan v. Read, 240 N. C. 641, 647, 83 S. E. 2d 706, 711 (1954).

[12] See Freeman v. Freeman, 226 La. 410, 76 So. 2d 414 (1954), where, after divorce was granted in Mississippi, husband went to Louisiana, and wife returned to Arkansas, where she instituted the action for support of their children. In Landres v. Landres, 207 Misc. 460, 138 N. Y. S. 2d 442 (N. Y. Dom. Rel. Ct. 1955), wife left husband in New York and went to California, where she initiated the action for support of their children. In Smith v. Smith, 281 P. 2d 274, 278 (Cal. Dist. Ct. of App. 1955), it was said: "They (the Acts) are based upon the failure to provide needed support for dependents, and the flight of the obligor is in no way made the controlling fact."

In respect to the *roving obligee,* however, the circumstances are different. This case is the only decision of an appellate court under the Act involving a three-state situation. Thus there was no precedent for this interpretation of the North Carolina Act,[13] restricting its application to cases where the obligee is residing in the initiating state at the time of the proceedings in the responding state.[14] A literal interpretation of a phrase of the Acts, ". . . regardless of the presence or residence of the obligee,"[15] might lead to a different conclusion, but the drafters of the original act indicated[16] that the quoted words were used as if to say, "regardless of whether the obligee is in this state," rather than, "regardless of which foreign state the obligee is in." As the court points out, the object of the Act was not only to enable obligees to acquire support more easily, but also to relieve the state of their residence of the burden of supporting them. Since Virginia had become the residence of the obligee, it seems logical that that state should have been the one in which proceedings were initiated.

The court also said that the superior court ". . . was in error in reaching the conclusion that the respondent's '. . . responsibility to support said children *has already been found to exist* by a court of *competent jurisdiction* . . . in the State of Arkansas.' "[17] (Emphasis added.) The findings of the court in the initiating state are not for the purpose of determining the rights between the parties but are to determine whether the complaint ". . . sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property. . . ."[18] Under the Acts of the two states it was not intended

[13] *Cf.* Vincenza v. Vincenza, 197 Misc. 1027, 98 N. Y. S. 2d 470 (N. Y. Dom. Rel. Ct. 1950), where the court of the initiating state refused to certify the petition as a matter of judicial discretion in deciding against extending the Support of Dependents Act.

[14] This case does not decide, of course, what is to happen if, at some time *after* the final judgment for support has been rendered, obligee moves from the initiating state, but at least the initiating state under this decision is not to be burdened with distribution of support payments to the obligee who removes from that state *prior* to any judgment in the responding state.

[15] ARK. STAT. ANN. § 34-2404 (Supp. 1953); N. C. GEN. STAT. § 52A-5 (Supp. 1953), which say in part: "The duty of support . . . bind(s) the obligor regardless of the presence or residence of the obligee."

[16] "The purpose here is to overcome the rule in some states that the duty of support runs only in favor of obligees within the state, and to overcome the indifference of many states which would refuse or neglect to support in favor of out-of-state dependents on the theory often only tacitly admitted, that one state has no interest in helping another state rid itself of the burden of supporting destitute families." 1952 HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 292.

[17] Mahan v. Read, 240 N. C. 641, 646, 83 S. E. 2d 706, 710 (1954).

[18] ARK. STAT. ANN. § 34-2413 (Supp. 1953); N. C. GEN. STAT. § 52A-11 (Supp. 1953). (Arkansas statute uses "respondent" instead of "defendant").

A 1955 amendment to N. C. GEN. STAT. § 52A-19, N. C. Sess. Laws 1955, c. 699, § 10, makes the verified complaint from the initiating state prima facie

that substantive rights should be determined by the court of the initiating state.[19] Obviously the court in Arkansas did not have jurisdiction to find that respondent owed a duty of support to his children, for respondent was not before that court and had, in fact, never been in Arkansas. The action taken by the Arkansas court was merely part of the procedure[20] by which the petitioner was able to present herself before the North Carolina court without necessity of personal appearance.[21]

The question of the real party in interest was another feature of this case. The Arkansas Act allows a person having legal custody of a minor obligee to bring suit,[22] but North Carolina law required that suit be brought in the name of the infant by general or testamentary guardian or duly appointed next friend.[23] For this reason, since petitioner had instituted the action for the support of her children in her own name, it was said that there was a defect of parties plaintiff. Since it is generally recognized that the law of the place of trial determines who may sue,[24] it is only in the Acts themselves that a different answer can be sought. The only section of the North Carolina Act which allowed election of laws[25] does not seem to apply unless the real party in interest requirement can be tortured into becoming a "remedy."[26] This question has become largely academic as far as North Carolina is concerned because of the amendments to the North Caro-

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evidence of the facts contained in it so long as defendant has been served with notice and summons; and, if after service defendant does not appear, the court may enter an order for support anyway.

[19] See Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?* 31 ORE. L. REV. 97, 107 (1952); appearing simultaneously in 17 Mo. L. REV. 1, 12 (1952). Professor Brockelbank was chairman of the committee which prepared the Uniform Reciprocal Enforcement of Support Act for the National Conference of Commissioners on Uniform State Laws.

[20] For decisions upholding the constitutionality of this procedure, see Duncan v. Smith, 262 S. W. 2d 373 (Ky. 1953); Smith v. Smith, 125 Cal. App. 2d 154, 270 P. 2d 613 (1954).

[21] In this case, however, petitioner was present at the hearing.

[22] ARK. STAT. ANN. § 34-2412 (Supp. 1953).

[23] N. C. GEN. STAT. § 1-64 (1953) and annotations thereunder.

[24] RESTATEMENT, CONFLICT OF LAWS § 588 (1934).

[25] "The duty of support imposed by the laws of this State *or by the laws of the state where the obligee was present when the failure to support commenced* . . . and the remedies provided for enforcement thereof . . . bind the obligor . . ." N. C. GEN. STAT. § 52A-5. (Emphasis added.)

Because of the election of laws given under an identically worded statute an Ohio respondent was held to have been denied equal protection of the laws of Ohio when Pennsylvania petitioner elected the support laws of Pennsylvania. Pennsylvania *ex rel.* Dep't of Public Assistance v. Mong, 160 Ohio St. 455, 117 N. E. 2d 32 (1954), 29 N. Y. U. L. REV. 1480, 102 U. PA. L. REV. 938.

[26] Certainly, what is meant by the phrase in N. C. GEN. STAT. § 52A-5, "remedies provided for the enforcement thereof," are the "terms and conditions" to which the court of the responding state may subject defendant as set forth in N. C. GEN. STAT. § 52A-15 (Supp. 1953).

lina Act passed by the 1955 General Assembly.[27] These amendments, among other things, take away the obligee's privilege of a questionable election of laws[28] and provide that the person having legal custody of a minor may bring suit.[29] In the instant case the court said that the complete answer to the essentially identically worded Arkansas statute was that ". . . this provision is not in the North Carolina Act."[30] The 1955 amendment places the provision in the North Carolina Act and apparently authorizes suit in the name of the legal custodian or guardian.

With the real party in interest question fairly well settled by statute and with the finding of a duty to support clearly the concern of the court in the responding state, the importance of the instant decision lies in the interpretation of the Act as requiring an obligee to be residing in the initiating state during the proceedings in the responding state. To avoid undue complication in the administration of the support funds, to remove a burden on a state no longer interested in the matter, and to aid in the uniformity of application of the Uniform Reciprocal Enforcement of Support Act, it is hoped that other jurisdictions will adopt this interpretation.

JAMES P. CREWS

Eminent Domain—Limited Access Highways

". . . I can go no further, Sir; my
old bones ache. Here's a maze trod
indeed through forth-rights and meanders!"
The Tempest, Act III, Sc. III.

Which lament might well be echoed by the puzzled motorist confronted by the clover-leafs, under and overpasses, traffic circles and other highway engineering stunts that seem to have mushroomed since the last war. These and other measures have been required by the great increase of traffic on our highways, which has made necessary a basic reconsideration of our highway systems.

The desire for increased safety plus a need for more efficient com-

[27] N. C. Sess. Laws 1955, c. 699. See Note, 33 N. C. L. REV. 513, 550 (1955). The changes made by this act place North Carolina in the group of states which have adopted the 1952 Uniform Reciprocal Enforcement of Support Act. Since a majority of the states and territories have adopted the 1952 Act, reciprocity will be augmented for North Carolina.

[28] N. C. Sess. Laws 1955, c. 699, § 4. "Duties of support applicable under this Act are those imposed or imposable under the laws of any state where the obligor was present during the period or any part of the period for which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown."

[29] N. C. Sess. Laws 1955, c. 699, § 6(d). "A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as next friend."

[30] Mahan v. Read, 240 N. C. 641, 648, 83 S. E. 2d 706, 712 (1954).