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NO. 52877-1-II

COURT OF APPEALS STATE OF WASHINGTON
DIVISION II

DAVID HEDGES,

Respondent,

v.

EVA HEDGES,

Appellant.

RESPONSE BRIEF OF APPELLANT
(Per General Order 2010-1)

Matthew D. Taylor, WSBA No. 31938
Attorney for Appellant Eva Hedges

MCKINLEY IRVIN, PLLC
1501 Fourth Avenue, Suite 1750
Seattle, WA 98101
(206) 625-9600

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A. UNDISPUTED FACTS

David and Eva Hedges met in Germany, married, and had two sons. Their son Timothy was born in 1983, and their son Philip was born in 1984. CP 208. The parties divorced, remarried, and then divorced again in March 1998. CP 209. Mr. Hedges stopped supporting his sons when they turned 21. Id. This occurred in 2004 for Timothy and in 2005 for Philip. Id. Ms. Hedges moved to Poland with Timothy and Philip. Id.

While in Poland, Ms. Hedges sought a child support order. According to Ms. Hedges' testimony at the administrative law hearing at issue in this case, she needed this order because both of the parties' sons are severely disabled. She testified they received Social Security disability benefits when they lived in the United States. CP 210. She submitted documentation showing their oldest son was diagnosed with mental retardation as a child and with schizophrenia when he was 27. Id. (citing AR at 223-27). She also provided documentation showing that their younger son received supplemental security income while in the United States, and that he was diagnosed with schizophrenia and agoraphobia. Id. (citing AR 248-49 and 242-60).

The lower court hearing in the Polish proceedings was held on March 9, 2012. CP 210 (citing AR at 87). Mr. Hedges claimed he knew nothing about this until April of 2012. CP 210. On April 25, 2012, Mr. Hedges hired a Polish attorney to appear on his behalf in the Polish action. Id. (citing AR at 73). On May 29, 2012, Mr. Hedges filed an appeal in the Polish proceeding. Id. (citing AR at 87). He challenged not only jurisdiction, but also “the decision in total[.]” Id. The bulk of his appeal focused on substantive issues of support, namely, whether his sons were disabled and capable of being self-supporting. Id. (citing AR 88-92). Mr. Hedges lost this proceeding, and on May 21, 2013, the Polish regional / appellate court issued a decree ordering him to pay additional support. CP 11.

On August 30, 2016, DCS issued and served a Notice of Support Debt and Registration of the Polish order on Mr. Hedges. CP 12. That same day, Mr. Hedges requested an administrative hearing. CP 13. The administrative law judge held telephonic hearings on March 29, 2017, May 8, 2017, May 22, 2017, and July 3, 2017. CP 8. The ALJ issued its ruling on February 21, 2018. CP 7.

On March 6, 2018, Mr. Hedges filed in Thurston County Superior Court a Petition for Judicial Review of the ALJ ruling. On November 2, 2018, the Superior Court reversed the decision of the ALJ. On November 16, 2018, Ms. Hedges filed this appeal.

B. RESPONSE ARGUMENT

1. Standard of review.

The Washington Administrative Procedure Act (APA), chapter 34.05 RCW, governs judicial review of agency orders. Port of Seattle v. Pollution Control Hr'gs Bd., 151 Wn.2d 568, 587, 90 P.3d 659 (2004); see RCW 34.05.570(3). That statute sets forth nine standards for granting relief from an agency order, several of which Mr. Hedges appears to contend are relevant to this appeal:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

...

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court ...;

....

RCW 34.05.570(3).

This Court's review of the facts is confined to the record before the Board. RCW 34.05.558; see Buechel v. Dep't of Ecology, 125 Wn.2d 196, 202, 884 P.2d 910 (1994) (appellate review is of the agency's decision, not the decision of the superior court). "The burden of demonstrating the invalidity of agency action is on the party asserting invalidity." RCW 34.05.570(1)(a).

The Court reviews an agency's legal determinations under the "error of law" standard, which allows the Court to substitute its view of the law for that of the agency. Verizon Nw., Inc. v. Emp't Sec. Dep't, 164 Wn.2d 909, 915, 194 P.3d 255 (2008); Motley-Motley, Inc. v. Pollution Control Hr'gs Bd., 127 Wn. App. 62, 72, 110 P.3d 812 (2005). Under this standard, the Court generally reviews de novo the agency's application of the law to a particular set of facts. Port of Seattle, 151 Wn.2d at 588.

Further, the Court reviews the agency's findings of fact to determine whether they are supported by substantial evidence in the record. Port of Seattle, 151 Wn.2d at 588. It views the "evidence and reasonable inferences therefrom in the light most favorable to the

party who prevailed at the administrative proceeding below.” Kirby v. Emp’t Sec. Dep’t, 185 Wn. App. 706, 713, 342 P.3d 1151 (2014). The Court does not weigh the credibility of witnesses or substitute its judgment for that of the agency or administrative law judge with regard to findings of fact. Bowers v. Pollution Control Hr’gs Bd., 103 Wn. App. 587, 596, 13 P.3d 1076 (2000).

2. Mr. Hedges’ Due Process rights were not violated because he received notice, an opportunity to be heard, and he actually participated in the proceedings in Poland. As such the ALJ did not err on this issue.

Mr. Hedges contends his due process rights were violated, and therefore, the administrative law judge erred. The Court should reject his arguments. On this issue, Mr. Hedges first claims he did not receive proper service, but he cites to no cases at all indicating his right to Due Process under the Constitution was violated even if this is true. Indeed, the very cases he cites make it clear the touchstone is whether he has “adequate notice and opportunity to be heard.” See Opening Brief at 18, citing Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). Indeed, this is the exact standard set forth for refusing to accept a foreign

support order on due process grounds: "... including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard[.]" See RCW 26.21A.617(2)(a). Likewise, the statute governing registration of a foreign support order indicates due process is satisfied under these circumstances:

If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal

See RCW 26.21A.613(2)(c).

Here, Mr. Hedges not only received notice and an opportunity to be heard in the proceedings in Poland, he actively participated in them. Again, it is undisputed that he knew of the March 9, 2012 Polish Court order by April 13, 2012 at the latest. CP 13, Finding 4.9. On April 25, 2012, Mr. Hedges hired an attorney in Poland, Mr. Slawomir Ligecki. See Administrative Record (AR), p. 39; CP 13. He issued a broad Power of Attorney to Mr. Ligecki. Id. His attorney argued not only lack of jurisdiction, but he also litigated the substance of the

matter including challenging the assertion that the children were disabled. See CP 14 (finding 4.12); CP 20 (conclusion 5.8); CP 210 (DSHS Response brief, citing AR 88-92: Mr. Hedges “challenged the decision in total” and “the bulk of his written appeal focuses on whether his sons were disabled and capable of being self-supporting.”)

Mr. Hedges cites several cases on this issue, including Mullane; Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 23 L.Ed.2d 556 (1972); Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972); and In re Marriage of Wherley, 34 Wn. App. 344, 661 P.2d 155 (1983). But for each of these citations, he provides literally no legal analysis, or even a recitation of the facts of those cases. See generally Opening Brief at 18-19. Instead, he simply cites them for undisputed propositions of law such as Due Process requiring notice and an opportunity to be heard. Id. These cases do not assist his argument.

Mr. Hedges also cites to several cases about the Hague convention, including cases addressing the abduction of children. See Opening Brief at 19-20. Although kidnapping is indeed an example of

behavior that would violate public policy (not to mention criminal statutes) in Washington, it is unclear how this example is helpful in analyzing whether Mr. Hedges received due process in this case.

The bottom line is that contrary to Mr. Hedges' argument, he did indeed receive due process, and as such the ALJ's decision on this issue was not error.

3. The courts in Poland did not lack personal jurisdiction over Mr. Hedges because his attorney entered a broad, general appearance in the proceedings in Poland and litigated the substance of the case on his behalf. As such the ALJ did not err on this issue.

Mr. Hedges also claims the ALJ erred because the Polish court lacked jurisdiction over him. Per RCW 26.21A.617(2)(b), personal jurisdiction in the foreign country must be consistent with RCW 26.21A.100. That statute describes bases for jurisdiction over a nonresident:

- (a) The individual is personally served with a citation, summons, or notice within this state;
- (b) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (c) The individual resided with the child in this state;

(d) The individual resided in this state and provided prenatal expenses or support for the child;

(e) The child resides in this state as a result of the acts or directives of the individual;

(f) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(g) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction

See RCW 26.21A.100(1).

Mr. Hedges claims none of these apply, but the Court should reject his argument. With respect to subsection (b), it clearly applies. Mr. Hedges attempts to downplay his participation in the Polish action, describing his attorney as merely having attempted “to have the Polish order vacated.” See Opening Brief at 21. But “[a] party waives his defense of lack of personal jurisdiction or insufficiency of process by failing to raise the issue in any entry of appearance, pleadings, or answers.” State ex rel. Coughlin v. Jenkins, 102 Wn. App. 60, 63, 7 P.3d 818 (2000). Likewise, “[a] party waives any claim of lack of personal jurisdiction if, before the court rules, he asks the court to grant affirmative relief, or otherwise impliedly consents to the court's exercising jurisdiction.” Id. (citing In re Steele, 90 Wn.App.

992, 997–98, 957 P.2d 247, review denied, 136 Wn.2d 1031, 972 P.2d 467 (1998)).

Here, Mr. Hedges’ attorney fully litigated the substance of the child support issues, including challenging the fact of his children’s disabilities. See CP 14 (finding 4.12); CP 20 (conclusion 5.8); CP 210 (DSHS Response brief, citing AR 88-92: Mr. Hedges “challenged the decision in total” and “the bulk of his written appeal focuses on whether his sons were disabled and capable of being self-supporting.”)¹ In short, Mr. Hedges waived his personal jurisdiction argument, and as such, the ALJ did not err on this issue.

4. The ALJ made no error in rejecting Mr. Hedges’ argument that the courts in Poland lacked subject matter jurisdiction. Mr. Hedges failed to present evidence he sought a determination as to which order was controlling, and in any event, Mr. Hedges’ own argument is that the older New York order had expired.

Mr. Hedges next claims the ALJ erred because the Polish court did not have subject matter jurisdiction. Specifically, he contends the

¹ Mr. Hedges also cites to the Hague Convention and to Kulko v. Superior Court of Cal., 436 W.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978) for the proposition that generally speaking, the United States does not follow the model of recognizing foreign support orders founded upon a child’s residence in a foreign country. These arguments are not relevant given Mr. Hedges waived his personal jurisdiction argument.

parties' 1998 New York divorce order is the controlling child support order, not the order issued by the Polish Court. Mr. Hedges first cites to the model Uniform Interstate Family Support Act of 2008. See Opening Brief at 23. But this is a model, not an actual statute applicable here. He also cites RCW 26.21A.025, but that is of no help here; it simply describes that the chapter applies to residents of foreign countries and foreign support proceedings.

He also cites RCW 26.21A.120, which describes when a court has continuing, exclusive jurisdiction to modify a child support order. According to Mr. Hedges, the Polish court did not have authority to modify the Child Support order because jurisdiction was properly in New York. See generally Opening Brief at 24-26. There are several problems with Mr. Hedges' argument. First, there is no evidence at all in the record indicating that Mr. Hedges sought a determination from DCS that the New York order was controlling per WAC 388-14A-7305, that he sought an adjudication in a superior court action, or that he sought a determination of some kind from New York, which is the state he claimed had jurisdiction. For this reason, there was no equivalent during the Polish proceedings to the UCCJEA hearings that

take place in child custody cases. Instead, Mr. Hedges participated in the case and argued the merits of the child support issue in Poland.

Likewise, even after the 2012 Polish proceedings, Mr. Hedges still failed to seek a determination from DCS or anywhere else that the New York order was the controlling order. Indeed, this is likely because it conflicts with Mr. Hedges' story, which is that the New York support order is dead, gone, and expired. See generally, Opening Brief at 7, 9-11. Mr. Hedges is simultaneously arguing that (1) 2012 and 2013 support orders from Poland are invalid due to a 1998 New York support order; and (2) that same 1998 New York support order expired in either 2003 or 2006.

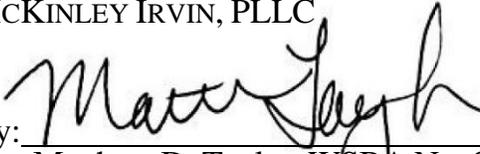
The Court should reject his arguments on this issue and conclude the ALJ did not err.

C. CONCLUSION

For the reasons described herein, Ms. Hedges respectfully requests that this Court reverse the decision of the Superior Court and reinstate the decision of the administrative law judge.

RESPECTFULLY SUBMITTED this 11th day of December, 2019.

MCKINLEY IRVIN, PLLC

By: 

Matthew D. Taylor, WSBA No. 31938
Attorney for Appellant Eva Hedges

Attorneys of Record:

Attorney for Appellant Eva Hedges:

Matthew D. Taylor, WSBA No. 31938
MCKINLEY IRVIN, PLLC
1501 Fourth Avenue, Suite 1750
Seattle, WA 98101

Attorney for Respondent David Hedges:

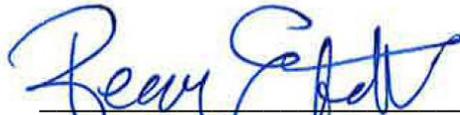
Sans M. Gilmore, WSBA No. 21855
SANS M. GILMORE, P.S., INC.
2646 RW Johnson Blvd. SW, Suite 100
Tumwater, WA 98512

CERTIFICATE OF SERVICE

I certify that on December 11th, 2019, I caused to be served a true and correct copy of the foregoing Appellant's Response Brief to Division II of the Court of Appeals on the following parties via electronic service:

Sans M. Gilmore, WSBA No. 21855
SANS M. GILMORE, P.S., INC.
2646 RW Johnson Blvd. SW, Suite 100
Tumwater, WA 98512
sansgilmore@gmail.com
Attorney for Respondent

DATED this 11th day of December, 2019.



BECCA EBERT, PARALEGAL

MCKINLEY IRVIN, PLLC

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