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Division II
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No. 52877-1-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

EVA HEDGES,

Appellant,

vs.

DAVID HEDGES,

Respondent.

RESPONDENT'S OPENING BRIEF

(General Order 2010-1 Applies)

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I. INTRODUCTION

Mr. and Mrs. Hedges were divorced in New York on February 27, 1998. They have two sons of the marriage who were 13 and 14 years old at that time. Pursuant to the agreed terms of their Final Divorce Order, David was to pay support for their sons until they were emancipated. There is no indication in their Final Divorce Order that either of their sons had any medical issue or medical concern. In fact, their Agreement contains a typical provision regarding Child Support where the parties agreed that Mr. Hedges would pay child support “until the older child, Timothy, reaches the age of majority, is emancipated, or until further order of the court.” The same language applied to their younger child, Phillip.

There was no evidence presented during the administrative law trial suggesting any modification of the 1998 support Order. Although the 1998 Order was never modified, David actually paid support for Timothy and Phillip until they reached age 21.

The evidence presented during the administrative law trial suggested that Eva, Timothy and Phillip moved to Poland in 2010. In 2010 Timothy would have been 26 years old and Phillip would have been 25 years old.

The only “contact” Mr. Hedges had with Poland was a brief visit, approximately one week, in 1989 or 1990.

The action in Poland started in 2012 when Timothy was 28 and Phillip was 27. David’s obligation to pay support had ended 7 years prior for Timothy and 6 years prior for Phillip.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The administrative court erred by concluding, without any evidence to support a finding, that, “5.3 ... Registration Requirements (c) ... Therefore, the undersigned concludes, the Non-custodial Parent had proper notice of the support order that was issued by the District Court for Krakow and had an opportunity to be heard in a challenge or appeal on fact or law before the Regional Court of Krakow.” AR, at 10.
2. The administrative court erred by concluding, without any evidence to support a finding, that, “5.7 ... the Noncustodial Parent submitted to the jurisdiction of Poland by retaining an attorney to represent him in his defense before the Regional Court for Krakow and thereby had notice and an opportunity [to] be heard.” AR, at 13.
3. The administrative court erred by concluding, without any evidence to support a finding, that, “5.8 ... the Noncustodial Parent waived [the defense of lack of] personal jurisdiction in Poland by his representative appearing before the Regional Court for Krakow on his behalf to contest the Regional Court for Krakow’s Decree entered on May 21, 2013”. AR, at 13-14.
4. The administrative court erred by concluding, without any evidence to support a finding, that, “5.12” ... [essentially

determining] that the Noncustodial Parent cannot raise the controlling order defense, RCW 26.21A.530(1)(h). AR, at 16-17.

5. The administrative court erred by concluding, without any evidence to support a finding, that, “5.13” Based on the evidence provided, the Noncustodial Parent has not presented evidence to a defense to the validity or enforcement of the registered order recognized by RCW 26.21A.617(2) and RCW 26.21A.530(1) by a preponderance of the evidence.” AR, at 17.
6. Because the administrative court’s conclusions were flawed, the Orders issued were equally flawed. AR, at 17.

B. Issues Pertaining to Assignments of Error

1. Whether DSHS may register and enforce the Polish Support Order when all the evidence tends to a finding and conclusion that registration and enforcement would be a substantial violation of Public Policy.
2. Whether DSHS may register and enforce the Polish Support Order when all the evidence directs a finding that Poland lacked personal jurisdiction over David.
3. Whether DSHS may register and enforce the Polish Support Order in light of the fact that David’s support obligation to his children was determined by the New York Divorce Order, was

never modified by Eva before David's support obligation ended, and both children were years into adulthood when Eva started the action attempting to modify the New York child support section of the New York Divorce Order in Poland.

III. STATEMENT OF THE CASE

1. Mr. David Hedges' and Eva Hedges' two sons were born in 1983 and 1984 respectively. 2 RP, at 60; AR, at 5, ¶ 4.1; AR, at 173. They lived together as a family in New York. 2 RP at 26:25. David has never been to Poland, except for one week in 1989 or 1990, when he went to visit his children. 2 RP, at 59:3-10.

2. David and Eva executed a set of comprehensive agreements when they were divorced. AR, at 55-65; AR, at 153-170. The agreements entitled "Marital Settlement Agreement" and "Addendum to Marital Settlement Agreement" are both dated October 5, 1994, (collectively referred to as "the written stipulation of the parties") were incorporated into their Judgment of Divorce & Ancillary Relief by reference (not merged). AR, at 57. A section of the written stipulation of the parties reads, "The Husband shall pay to the wife for the support of the minor children ... the sum of \$700.00 per month ... and continuing each month thereafter until the older child, Timothy ... reaches the age of majority, is emancipated, or until further order of the court ... Thereafter child support shall be reduced according to the child support guidelines, based upon one minor child ... until the remaining child reaches the age of majority, is

emancipated, or until further order of the court.” AR, at 153-154. The parties agreed to certain child support changes that defined child support during the periods when David was obligated to pay Eva spousal maintenance and child support after spousal maintenance ended. AR, at 164. Finally, they agreed that child support would end when both children became adults. AR, at 154; 3 RP, at 27:12-16. After David’s spousal maintenance ended, his child support obligation increased to \$712.41 per month. AR, at 162. David stopped supporting his sons as each of them turned 21. 3 RP, at 27:17-20. This occurred in 2004 for Timothy and 2005 for Philip. 2 RP, at 37:25, 38:1. And, the record doesn’t contain any evidence that either party ever attempted to modify child support before their children turned 18 years old or before David stopped paying support after each of them turned 21 years old.

3. On March 31, 2016, the Department of Social and Health Services received a request from Poland to register and enforce a Polish child support order. 2 RP, at 38:2-5. The Polish child support order is dated May 23, 2013 and requires David to pay 3,000 zlotys for each of his sons, for a total of 6,000 zlotys per month beginning March 2012. AR, at 53; 2 RP, at 38:10-13. In 2013, when the order was entered, Timothy was 29 and Philip was 28. 2 RP, at 37:25 and 38:1. On August 30, 2016, DCS served a Notice of Support Debt and Registration by certified mail on David. AR, at 42-48. DCS converted zlotys to dollars and determined that David was

required to pay \$1,547.06 in United States currency. AR, at 06; AR, at 45.

David requested an administrative hearing the same day. AR, at 36-37.

4. The registration notice sent to David by DCS directed David to RCW 26.21A.530 as his choice of defenses. AR, at 47. Based on that guidance, David filed a timely Objection to Notice of Registration. AR, at 36-37. The essence of David's Objection was that the Polish Support Order was manifestly incompatible with public policy and referenced the Uniform Interstate Family Support Act (2015). AR, at 37. Prior to the Administrative Trial commencing, he'd also raised other defenses including, but not limited to, the Polish Court lacked personal jurisdiction over him and the Polish Court had also failed to provide him with procedural due process. AR, at 37; AR, at 39-40.

5. The evidentiary hearing was initially scheduled for March 29, 2017. AR, at 33. Arrangements were made for Eva, who lives in Poland, to appear telephonically and have a translator. AR, at 2. Because of the amount of time needed, and coordination issues, the evidentiary hearing was continued and heard on four separate days: March 29, 2017, May 8, 2017, May 22, 2017, and July 3, 2017. 1 RP, 2 RP, 3 RP and 4 RP. David was represented by his current attorney, Sans Gilmore, Eva appeared pro se, and DCS was represented by in house attorney, Deanna Swanson. AR, at 2.

6. The Administrative Law Judge (ALJ) confirmed registration of the Polish child support order. AR, at 1-17. She ruled that David is required to

pay current child support of \$1,547.06 beginning August 2016, and \$99,287.92 for past support for the period of March 10, 2012 through July 31, 2016. AR, at 1-17. The legal conclusion that she relied on was that David's receipt of the Polish certified mail and his retaining an attorney in Poland was an opportunity to be heard and/or a general appearance that waived his right to additional due process.

IV. STANDARD OF REVIEW

1. The appellate court reviews the administrative record in its appellate capacity and generally cannot consider issues not raised before the agency or evidence not made part of the administrative record. RCW 34.05.554; RCW 34.05.562. The record consists of the written Original Agency Record (AR) consisting of 316 pages filed on or about March 13, 2018 (pp. 1-21, Final Order; pp. 22-34, series of administrative orders and other documents; and, pp. 35-316, administrative Hearing Exhibits), and the Verbatim Report of Proceedings (RP) filed on or about April 16, 2018. Volume I dated March 29, 2017, consists of 29 pages (1 RP); Volume II, dated May 8, 2017, consists of 67 pages (2 RP); Volume III, dated May 22, 2017, consists of 54 pages (3 RP); and Volume IV, dated July 3, 2017, consists of 51 pages (4 RP).

2. The party challenging a final agency order has the burden of demonstrating it should be overturned. RCW 34.05.570(1)(a); *Verizon N.W., Inc. v. Emp't Sec. Dep't*, 164 Wn.2d 909, 915-16, 194 P.3d 255 (2008). This Court's review under the APA is generally limited to

“deciding if the decision is based on an error of law, the order is not supported by substantial evidence, or the order is arbitrary and capricious.” *Campbell v. Emp’t Sec. Dep’t*, 180 Wn.2d 566, 571, 326 P.3d 713 (2014); RCW 34.05.570(3)(a)-(i).

3. ““ Our [courts of Appeal] review of [administrative orders] is de novo under RCW 34.05.570(3)(b) through (d), determining whether the [order] contains a legal error.” *Spokane County v. E. Wash. Growth Mgmt. Hr’gs Bd.*, 176 Wn.App. 555, 565, 309 P.3d 673 (2013).” We view the evidence in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority.” *Miotke v. Spokane County*, 181 Wn.App. 369, 376, 325 P.3d 434 (2014).”” *Spokane County v. Eastern Washington Growth Management Hr’gs Board*, 188 Wn.App. 467, 481-482, 353 P.3d 680, (Div. 3 2015).

4. Registration of a convention order must be confirmed unless David can establish a defense that is available under RCW 26.21A.617. David originally raised defenses under RCW 26.21A.530 because that was the reference provided in the original DCS Notice. AR, at 47. However, the ALJ’s Final Order analyzes the ruling based on RCW 26.21A.617 which is appropriate. AR, at 1-17. Of the statutorily available defenses, the ones that David raises are: RCW 26.21A.617(2)(a) whether “Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and the opportunity to be heard;” and

(2)(b) whether “the issuing tribunal lacked personal jurisdiction consistent with RCW 26.21A.100.” *See* RCW 26.21A.617. Additionally, David questions whether Poland has subject matter jurisdiction to establish child support when there is a prior child support order that was entered in the parties’ New York dissolution action. When this Court reviews these issues, out-of-state cases have more weight than in other types of family law actions. *See* RCW 26.21A.905 (when construing UIFSA 2008, consideration should be given to the need to promote uniformity of the law with respect to states that enact it).

5. The Uniform Interstate Family Support Act (UIFSA) governs this case. *In re Schneider*, 173 Wn.2d 353, 355, 268 P.3d 215, (2011) (The Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW, governs modification of child support obligations in Washington when the initial child support order was entered in a different state but one of the parties lives in Washington). As of April 2016, the UIFSA 2008 has been adopted in all 50 states. Pursuant to a federal child support program requirement, UIFSA governs the procedures for establishing and enforcing child support obligations when the parents reside in different jurisdictions, including foreign countries. *Id.*, at 369. A central purpose of UIFSA is to ensure that only one forum has jurisdiction over child support at a time. *See*, RCW 26.21A.120.

6. The 2008 version of UIFSA implements a treaty between the United States and other signatory countries, including Poland. It “expands

the principles of interstate recognition and enforcement familiar to domestic child support cases to international cases.” Eric M. Fish, *The Uniform Interstate Family Support Act (UIFSA) 2008: Enforcing International Obligations Through Cooperative Federalism*, 24 J. Am. Acad. Matrim. Law. 34 (2011). UIFSA 2008 authorizes a tribunal of this state to enforce a child support order from a foreign country. *See*, RCW 26.21A.110 and RCW 26.21A.220. Although UIFSA 2008 was enacted in Washington State in 2015, it applies to all actions to register orders that commenced after July 1, 2015, such as this one. *See*, RCW 26.21A.907. Because the registration action commenced after UIFSA 2008 was effective, this version applies, even though the Polish order was entered before the Act became law. *Id.*

7. Because the United States and Poland have both approved the Hague Convention concluded on November 23, 2007, on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention), the Polish order is a “Convention Support Order.” RCW 26.21A.601(3).¹ Article 7 of UIFSA 2008 governs Convention Orders and is codified at RCW 26.21A.601-630. RCW 26.21A.603.

V. RESPONDENT’S ARGUMENTS

A. THE POLISH SUPPORT ORDER IS MANIFESTLY INCOMPATIBLE WITH PUBLIC POLICY.

¹ Article 2 of the Hague Convention states that it applies to maintenance obligations from a parent-child relationship towards a person under the age of 21. Exhibit A. Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (concluded on November 23, 2007). There is no convention or federal requirement that child support enforcement agencies provide support enforcement services for current support after age 21.

Washington law permits a parent to block enforcement of a foreign order if the order issued is *manifestly incompatible with public policy*.

- a. **Public policy requires David be afforded substantial due process rights which he was not afforded.**

The applicable Washington statute reads, “(2) *The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order: (a) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;* RCW 26.21A.617(2)(a). The record shows that David was not served while he was in Poland. 2 RP, at 58, 63; 2 RP at 59:3-10. The record shows that David was not served at all. 2 RP, at 43-44: 17-25; 1-12. ALJ Glenn seemed to appreciate this legal requirement and she issued an interim order on November 22, 2017, directing, “*the Division of Child Support shall provide a copy of the service of process documents that were served by the Polish court on David for the March 9, 2012 hearing and the May 21, 2013 hearing and/or a record attesting that David had proper notice of the support order and an opportunity to be heard.*” AR, pp. 22-23. The only document filed by DCS, Claims Officer Deanna Swanson, after November 22, 2107, under penalty of perjury states, “The Division of Child Support business records indicate that Mr. Hedges signed for the Notice of Registration on August 30, 2016 ...” AR,

p. 310 (duplicate, p. 315). No other document was submitted by DCS in an attempt to comply with the interim order. ALJ Glenn, in her Final Order, refers to a Hearing Exhibit p. 283. There is no such Hearing Exhibit in the record. The final pages of the Administrative Record (AR) are AR 315 and 316 which are Hearing Exhibit pp. 281 and 282 respectively. So, there is no proof of pre-hearing notice given to David by the Polish court.

The administrative court erred by concluding that, “5.3 ... *Registration Requirements (c) ... Therefore, the undersigned concludes, the Non-custodial Parent had proper notice of the support order that was issued by the District Court for Krakow and had an opportunity to be heard in a challenge or appeal on fact or law before the Regional Court of Krakow.*” AR, at 10. The only evidence that the ALJ could have relied on was the fact that David received a certified letter that contained the Polish Support Order. AR, at 10. David admitted to such receipt. 2 RP, at 58. The due process afforded to David must comply with the Fourteenth Amendment of the United States Constitution and the parallel state Constitutional provision, Const. art. I, § 3. The due process requirement is not satisfied unless David received adequate notice and opportunity to be heard. *See, Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). “These safeguards serve to minimize the risk of mistake or substantial unfairness. *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972). How much protection

is necessary depends on the particular situation. *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). Ordinarily, the protection afforded by notice and an opportunity to be heard is necessary because the parties are adversaries in the sense that one party opposes the relief sought by the other.” *In re Marriage of Wherley*, 34 Wn.App. 344, 661 P.2d 155, (Div. 2 1983). “RCW 4.24.820(1) bars the enforcement by Washington courts or administrative agencies of "any order issued under foreign law, or by a foreign legal system, that is manifestly incompatible with public policy." As stated above, an order is presumed to be manifestly incompatible with public policy when it does not grant parties the same rights as the parties are granted under the Washington or United States Constitutions. RCW 4.24.820(2). This statute was enacted in conjunction with the most recent amendments to the UIFSA. LAWS OF 2015, ch. 214 § 61. It is apparent that the chief constitutional concern embodied by the public policy exception is the right to due process.[2] While a dearth of case authority exists as to what non-constitutional issue could amount to a manifest incompatibility of public policy, the phrase also appears in article 22(a) of the Hague Convention on the International Recovery of Child Support and Other Forms of Maintenance— a treaty that the United States ... has ratified. Commentators have sought to provide a coherent definition. An applicable example, provided by the State Department to the Senate in facilitation of the Hague Convention’s ratification, was as follows:

“[A] U.S. competent authority could decline to recognize and enforce a decision against a left-behind U.S. parent in an abduction case where the child had been wrongfully taken or retained, on the grounds that recognition and enforcement of such decision would be manifestly incompatible with the U.S. public policy of discouraging international parental child abduction.”

Robert Keith, *Ten Things Practitioners Should Know About the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, 51 FAM. L.Q. 255, 262 (2017) (quoting S. TREATY DOC. NO. 110-21, at 16 (2008)).” *Brett v. Martin*, 445 P.3d 568, (Div. 1 2019). All Washington support cases require the non-moving party be personally served with a Summons and Petition in advance of any court or administrative body conducting the hearing requested by the moving party. RCW 4.28.080; RCW 26.10.030(2); RCW 26.21A.100(1)(a). David did not receive advance notice of the hearing that resulted in the Polish Support Order.

b. Poland lacked personal jurisdiction.

Washington’s personal jurisdiction reservation is codified at RCW 26.21A.617 which permits David to block enforcement of the Polish order if “the issuing tribunal lacked personal jurisdiction consistent with RCW 26.21A.100.” RCW 26.21A.617(2)(b).² Here, David asserts that he

² See also RCW 4.24.820 for a similar defense. This statute, which was enacted in 2015, states: “Washington’s courts, administrative agencies, or any other Washington tribunal shall not recognize, base any ruling on, or enforce any order issued under foreign law, or by a foreign legal system, that is manifestly incompatible with public policy.” RCW 4.24.820(1). Although I was unable to locate any cases construing this recently enacted statute, the final bill report shows that it was enacted because of concerns about UIFSA’s requirement that Washington courts enforce foreign child support orders. The bill report states: “Washington presumes any foreign order is manifestly incompatible with public policy when enforcement of the order would result in a violation of any right guaranteed by the state or federal constitutions.” Final Bill Report on ESSB 5498, 64th Leg., Reg. Sess. (Wash. 2015).

was deprived of due process since he did not receive notice of the Polish child support proceeding until after the initial order was entered, and he was limited to appealing the decision. 2 RP, at 58.

RCW 26.21A.100 provides, in pertinent part, as follows:

Bases for jurisdiction over nonresident.

(1) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if: (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 the 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.

With respect to (1)(a), David was not served within Poland.

With respect to (1)(b), David did not submit to jurisdiction. 2 RP, at 62-63: 24-25; 1-8. Mr. Ligecki filed an appeal on David's behalf attempting to have the Polish order vacated. AR, at 7; AR, at 87-92.

With respect to (1)(c), David never resided in Poland. AR, at 8 (4.14).

With respect to (1)(d), David never resided or provided financial support in Poland. Id.

With respect to (1)(e), neither of David's adult children resided in Poland because of any act on David's part.

With respect to (1)(f), both of their adult children were conceived and born in New York. 2 RP, at 60; AR, at 5 (4.1).

With respect to (1)(g), please consider the next argument section. In summary of applying RCW 26.21A.100(1)(a) through (1)(g) and the cited cases to the case at hand, no fact associated with this case may lead to a finding that David has sufficient connections with Poland for the Polish Court to assert personal jurisdiction over David.

- c. **A Convention child support order is only enforceable in Washington (or any state of the United States) if it is determined taking into considerations the United States' Hague Convention reservations regarding child support orders.**

When the United States approved the Hague Convention, it did not approve the convention in its entirety. The United States declared that it would not recognize article 20 of the Hague convention, which covers personal jurisdiction. *See*,

[https://www.hcch.net/en/instruments/conventions/status-](https://www.hcch.net/en/instruments/conventions/status-table/print?cid=131)

[table/print?cid=131](https://www.hcch.net/en/instruments/conventions/status-table/print?cid=131), (last visited October 4, 2018).³ In virtually all foreign nations there is jurisdiction to enter an order requiring the noncustodial parent to pay child support based on the habitual residence of the custodian or child in the forum country. *See* Model Uniform Interstate Family Support Act (2008) at 112. The law in the United States is often

³ A copy of the reservations to the Convention made by the United States is attached as Exhibit B. United States of America Articles Declarations Reservations (07-09-2016) Reservations:
(1) In accordance with Articles 20 and 62 of the Convention, the United States of America makes a reservation that it will not recognize or enforce maintenance obligation decisions rendered on the jurisdictional bases set forth in subparagraphs 1(c), 1(e), and 1(f) of Article 20 of the Convention.

regarded as idiosyncratic since a foreign state does not acquire jurisdiction unless there is a sufficient nexus between the obligor parent and the state entering the child support order. *See, Kulko v. Superior Court of Cal.*, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978). Because of *Kulko* and progeny, the United States took exception to the personal jurisdiction provision of the Hague Convention and did *not* agree to recognize a foreign child support order founded on the child's or custodian's residence in the forum country. *See, Model Uniform Interstate Family Support Act 2008*, Official Comments § 201 at 26, § 708 at 110-112. Thus, in *In re Marriage of Lohman*, 361 P.3d 1110 (Colo., 2015), the Colorado court concluded that the personal jurisdiction requirement was not satisfied in a UIFSA case, merely because the English court acquired personal jurisdiction under English law. *Id.*, at 1115. Similar to *Lohman*, Poland proceeded against David as if it had personal jurisdiction over David under its laws. The courts in Poland applied personal jurisdiction over David because Eva, Timothy, and Phillip lived in Poland. If this court applies *Kulko* and *Lohman* to the facts of this case, the just conclusion is the Polish order is unenforceable here.

d. The Polish court lacked subject matter jurisdiction.

When the parties were divorced in 1998 in New York, they were under the exclusive jurisdiction of the state of New York. *See Model Uniform Interstate Family Support Act 2008*, Official Comments § 611 at 88-91 (for example, *Subsection (d) prohibits imposition of multiple, albeit*

successive, support obligations. The initial controlling order may be modified and replaced by a new controlling order in accordance with the terms of Sections 609 through 614. But, the duration of the child support obligation remains constant, even though other aspects of the original order may be changed). Here, the parties were subject to the 1998 final divorce order issued in New York including the support section of the parties' settlement agreement, which was incorporated by reference, provided the parties with a well-defined end date which was when their children reached the age of majority. AR, at 154; AR, at 164. That date had passed by several years prior to their move to Poland. 2 RP, at 5 (4.1).

As noted above, a central purpose of UIFSA is to ensure that there is only one forum that has jurisdiction to set child support. Because the Polish Support Order was issued after the Hedges' New York Order already established David's child support obligation, it is a modification. *See, Matter of Ardell v. Ardell*, 140 A.D.3d 863, 865, 34 N.Y.S.3d 106 (2016) (the entry of a child support order that differs from a pre-existing one is a modification under UIFSA). UIFSA 2008, and earlier versions, limit when a state can modify a child support order issued by another state or a foreign country. *See* RCW 26.21A.025,.120. When there is more than one tribunal that has issued a child support order, the controlling order is determined under RCW 26.21A.120 and .130. Here, there is a New York order and a Polish order that conflict with each other. If David continued to reside in New York when the Polish proceeding commenced, New York

retained continuing, exclusive jurisdiction. See RCW 26.21A.120(a) (a state retains continuing, exclusive jurisdiction if any of the parties reside in the state where the child support order was entered when the modification is filed). Here, it is unclear from the record what day the Polish modification action commenced, although this occurred in 2012 at the latest, or where David resided at that time. Therefore, it cannot be ascertained whether New York retained continuing, exclusive jurisdiction.

Even if New York would otherwise retain continuing, exclusive jurisdiction, its child support order can be modified in another forum in some circumstances. Modifications are permitted when a foreign country lacks or refuses to exercise jurisdiction to modify an order. RCW 26.21A.570. This provision was enacted to help ensure that there would be a jurisdiction that would be available to modify child support. *See* Model Uniform Interstate Family Support Act 2008, Official Comments § 615 at 95. In some countries, both parents must be physically present to modify child support, and UIFSA 2008 provides flexibility to set child support somewhere else in this situation. *Id.* The official comment notes, however, that this authority should be invoked with circumspection as “there may be a cogent reason for such refusal.” *Id.*; *See also Ardell* 140 A.D.3d at 865 (court construed New York statute corresponding to RCW 26.21A.570 and concluded New York lacked jurisdiction to modify Swedish order, in part, because the record did not show that Sweden refused to exercise its jurisdiction to modify the child support obligation.)

UIFSA 2008 protects the receiving parent in a convention country from modifications in a foreign country when the paying parent has left the country where the original child support order was entered. RCW 26.21A.625 states in pertinent part: “A tribunal of this state may not modify a convention child support order if the obligee remains a resident of the foreign country where the support order was issued . . .” without the obligee’s consent. RCW 26.21A.625. The official comment explains that a foreign country that issues a child support order retains continuing, exclusive jurisdiction to enter child support orders so long as the receiving parent remains in that country. *See* Model Uniform Interstate Family Support Act 2008, Official Comments § 711 at 116. This restriction against modifying another country’s order does not apply when it is the receiving parent who has relocated, which is what has occurred in the instant case. *Id.* The official comment explains that when the receiving parent moves to a foreign country, the issuing tribunal must have personal jurisdiction over the paying parent to proceed. *Id.*

The Hague Convention, which is binding on Poland, offers additional guidance. Article 22 of the Hague Convention, states that “[r]ecognition and enforcement of a decision may be refused if . . . the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.”

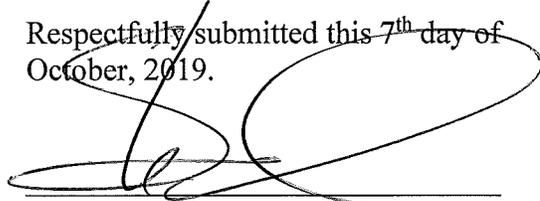
Here, the Hedges' New York child support order involves the same parties as the Polish order and they are incompatible with each other; the Polish order conflicts with the termination clause of the New York order. Article 22 appears to prompt Poland to exercise caution before modifying the order but does not forbid it. But because Poland does not appear to have inquired about its authority to proceed, in light of the New York order, independent scrutiny by this Court is in order. Even when a judgment is entered by a sister state, a court is not required to extend full faith and credit without making its own independent examination of the court's jurisdiction. *Superior Court v. Ricketts*, 153 Md. App. 281, 836 A.2d 707, 734-36 (2003). This is especially true when jurisdiction has not been fully and fairly litigated before the tribunal issuing the order. *Id.*

VI. CONCLUSION

It is our hope that this court will recognize that David has met his burden of proving the Polish support order is unenforceable and that it should not have been registered by the state. David was not afforded any due process which makes the enforcement of the order against public policy. Poland lacked personal jurisdiction which is defined in RCW 26.21A.617(2)(b), RCW 26.21A.100 and UIFSA § 201. The Polish support order fails because the order was not created in accordance with the United States' Hague Convention reservations. Finally, Poland lacked subject matter jurisdiction because the subject matter jurisdiction of

parties' support requirements continues to be the exclusive purview of the
State of New York.

Respectfully submitted this 7th day of
October, 2019.

A handwritten signature in black ink, appearing to be 'S.M. Gilmore', written over a horizontal line.

SANS M. GILMORE, WSB #21855
For Respondent
Sans M. Gilmore, P.S., Inc.
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Declaration of Transmittal

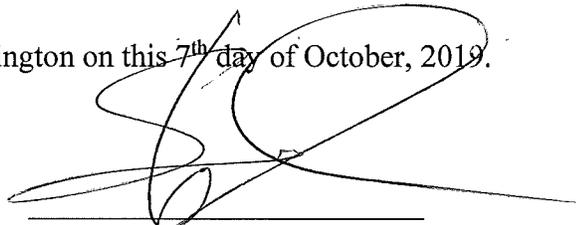
Under penalty of perjury under the laws of the State of Washington, I affirm the following to be true:

I transmitted Respondent's Opening Brief by electronic filing to:

Washington State Court of Appeals
Division II
950 Broadway, Ste. 300
Tacoma, WA 98402

on October 7, 2019, and by either hand delivery to or electronic service (pre-arranged and agreed) to Appellant's attorney of record, Matthew D. Taylor, WSB #31938.

Signed at Tumwater, Washington on this 7th day of October, 2019.



SANS M. GILMORE, WSB #21855
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HCCH: Hague Conference on Private International Law

38. Convention on the International Recovery of Child Support and other forms of Family Maintenance

(Concluded 23 November 2007)

Pages 1 & 2

**38. CONVENTION ON THE INTERNATIONAL RECOVERY
OF CHILD SUPPORT AND OTHER FORMS OF FAMILY
MAINTENANCE¹**

(Concluded 23 November 2007)

The States signatory to the present Convention,
Desiring to improve co-operation among States for the international recovery of child support and other forms of family maintenance,
Aware of the need for procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair,
Wishing to build upon the best features of existing Hague Conventions and other international instruments, in particular the United Nations *Convention on the Recovery Abroad of Maintenance* of 20 June 1956,
Seeking to take advantage of advances in technologies and to create a flexible system which can continue to evolve as needs change and further advances in technology create new opportunities,
Recalling that, in accordance with Articles 3 and 27 of the United Nations *Convention on the Rights of the Child* of 20 November 1989,

- in all actions concerning children the best interests of the child shall be a primary consideration,
- every child has a right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,
- the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development, and
- States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child,

Have resolved to conclude this Convention and have agreed upon the following provisions –

CHAPTER I – OBJECT, SCOPE AND DEFINITIONS

Article 1
Object

The object of the present Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by –

- a) establishing a comprehensive system of co-operation between the authorities of the Contracting States;
- b) making available applications for the establishment of maintenance decisions;
- c) providing for the recognition and enforcement of maintenance decisions; and
- d) requiring effective measures for the prompt enforcement of maintenance decisions.

¹ This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions". For the full history of the Convention, see Hague Conference on Private International Law, *Proceedings of the Twenty-First Session* [to be published].

Article 2
Scope

- (1) This Convention shall apply –
 - a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;
 - b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph a); and
 - c) with the exception of Chapters II and III, to spousal support.
- (2) Any Contracting State may reserve, in accordance with Article 62, the right to limit the application of the Convention under sub-paragraph 1 a), to persons who have not attained the age of 18 years. A Contracting State which makes this reservation shall not be entitled to claim the application of the Convention to persons of the age excluded by its reservation.
- (3) Any Contracting State may declare in accordance with Article 63 that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the Convention.
- (4) The provisions of this Convention shall apply to children regardless of the marital status of the parents.

Article 3
Definitions

For the purposes of this Convention –

- a) “creditor” means an individual to whom maintenance is owed or is alleged to be owed;
- b) “debtor” means an individual who owes or who is alleged to owe maintenance;
- c) “legal assistance” means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings;
- d) “agreement in writing” means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference;
- e) “maintenance arrangement” means an agreement in writing relating to the payment of maintenance which –
 - i) has been formally drawn up or registered as an authentic instrument by a competent authority; or
 - ii) has been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority;
- f) “vulnerable person” means a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself.

CHAPTER II – ADMINISTRATIVE CO-OPERATION

Article 4
Designation of Central Authorities

- (1) A Contracting State shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.
- (3) The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law at the time when the instrument of ratification or accession is deposited or when a

United States of America

Declarations/Reservations

Articles: 20, 44, 60-63

07-09-2016

Reservations:

(1) In accordance with Articles 20 and 62 of the Convention, the United States of America makes a reservation that it will not recognize or enforce maintenance obligation decisions rendered on the jurisdictional bases set forth in subparagraphs 1(c), 1(e), and 1(f) of Article 20 of the Convention.

Article 20

Bases for recognition and enforcement

(1) A decision made in one Contracting State ("the State of origin") shall be recognized and enforced in other Contracting States if -

- c)* the creditor was habitually resident in the State of origin at the time proceedings were instituted;
- e)* except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or
- f)* the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.

SANS M GILMORE PS INC

October 07, 2019 - 2:32 PM

Transmittal Information

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Appellate Court Case Title: Eva Hedges, Appellant v. David Hedges, Respondent
Superior Court Case Number: 18-2-01356-6

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